TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1750]

PART 74—RIGHTS-OF-WAY

RESERVATION OF PUBLIC LAND FOR HIGHWAY PURPOSES; APPROPRIATION OF ADJOINING LAND

§ 74.28 *Establishment of reservation.* Public Land Order No. 601 of August 10, 1949 (14 F. R. 5049) provides:

Subject to valid existing rights and to existing surveys and withdrawals for other than highway purposes, the public lands in Alaska lying within 300 feet on each side of the center line of the Alaska Highway, 150 feet on each side of the center line of all other through roads, 100 feet on each side of the center line of all feeder roads, and 50 feet on each side of the center line of all local roads, in accordance with the following classifications, are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, and reserved for highway purposes:

Through roads. Alaska Highway, Richardson Highway, Glenn Highway, Haines Highway, Tok Cut-Off.

Feeder roads. Steese Highway, Elliott Highway, McKinley Park Road, Anchorage-Potter-Indian Road, Edgerton Cut-Off, Tok Eagle Road, Ruby-Long-Poorman Road, Nome-Solomon Road, Kenai Lake-Homer Road, Fairbanks-College Road, Anchorage-Lake Spenard Road, Circle Hot Springs Road.

Local roads. All roads not classified above as Through Roads or Feeder Roads, established or maintained under the jurisdiction of the Secretary of the Interior.

§ 74.29 *Effect of reservation.* The reservation made by Public Land Order No. 601 of August 10, 1949, operates as a complete segregation of the land from all forms of appropriation under the public-land laws, including the mining and the mineral-leasing laws. Unless under the law or regulations such right or claim may embrace non-contiguous land, a right or claim to public land in the territory fronting on a withdrawal made by Public Land Order 601 and initiated on or after August 10, 1949, must be restricted to land on one side of the withdrawn area, except that a homestead settlement or entry may be made for land crossed by the strip withdrawn in connection with a local road, exclusive of such strip.

§ 74.30 *Statement required of applicants as to public roads.* Every applicant for public lands in Alaska whose right or claim does not antedate the withdrawal will be required to state in his application, or in a written statement furnished with the application, whether or not the land applied for is crossed by a public road. If it is, such road must be identified by name or otherwise.

§ 74.31 *Appropriation of land up to reserved area; advance surveys not required.* Subject to § 74.29, public land on either side of the reserved area, both surveyed and unsurveyed, if otherwise available, may be included in claims extending up to but not including any part of the reserve. Where the land has been surveyed under the rectangular system and the surveys have not been closed on the reserved area, applications may be filed and entries allowed for portions of the legal subdivisions outside of the reserved area without awaiting additional surveys. Where the surveys have been closed on the reserved area, the land must be identified in the terms of such surveys. Settlements on unsurveyed public lands must conform to 43 CFR 65.2, so far as practicable.

§ 74.32 *Acreage limitation.* An application presented in advance of the approval of an official survey closing on the reserved area must show that the area described does not exceed the maximum area permitted by the law under which the application is made.

§ 74.33 *Adjustments after survey.* Every application made for public land abutting on the reserved area, not described in the terms of an official plat of survey closing on that area, will be subject to adjustment, both as to description and area, after such an official survey has been made.

(R. S. 2478; 43 U. S. C. 1201)

MARION CLAWSON,
Director.

Approved: March 28, 1950.

OSCAR L. CHAPMAN,
Secretary of the Interior.

[F. R. Doc. 50-2706; Filed, Mar. 31, 1950; 8:48 a. m.]

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See Circ. 1854, 1855 & 1873 too.

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1751]

PART 115—REVESTED OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY WAGON ROAD GRANT LANDS IN OREGON

PERMITS FOR RIGHTS-OF-WAY FOR LOGGING ROADS

AUTHORITY: §§ 115.154 to 115.179 issued under 28 Stat. 635, as amended, sec. 11, 39 Stat. 223, sec. 6, 40 Stat. 1181, sec. 5, 50 Stat. 875; 43 U. S. C. 956.

§ 115.154 *Statutory authority.* (a) The act of January 21, 1895 (28 Stat. 635, 43 U. S. C. 956) authorizes the Secretary of the Interior under such regulations as may be fixed by him to permit the use of rights-of-way over the public lands of the United States, for tramroads

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to the extent of 50 feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, engaged in the business of mining, or quarrying or of cutting timber and manufacturing timber. The act of January 21, 1895, is made applicable to the Revested Oregon and California Railroad and the Reconveyed Coos Bay Wagon Road Grant Lands by the acts of June 9, 1916 (39 Stat. 218) and February 26, 1919 (40 Stat. 1179), respectively.

(b) The act of August 28, 1937 (50 Stat. 874) provides for the conservation and management of the O. and C. lands and authorizes the Secretary of the Interior to make rules and regulations in furtherance of such purposes.

§ 115.155 *Statement of policy.* (a) The intermingled character of the O. and C. lands presents peculiar problems of management which require for their solution the cooperation between the Federal Government and the owners of the intermingled lands, particularly with respect to timber roads.

(b) It is well established that the value of standing timber is determined in significant part by the cost of transporting the logs to the mill. Where there is an existing road which is adequate or can readily be made adequate for the removal of timber in the area, the failure to make such road available for access to all the mature and overmature timber it could tap leads to economic waste. Blocks of timber which are insufficient in volume or value to support the construction of a duplicating road may be left in the woods for lack of access over the existing road. Moreover, the duplication of an existing road reduces the value of the federal and other timber which is tapped by the existing road.

(c) It is also clear that the Department of the Interior, which is responsible for the conservation of the resources of the O. and C. lands and is charged specifically with operating the timber lands on a sustained-yield basis, must have access to these lands for the purpose of managing them and their resources. In addition, where the public interest requires the disposition of federal timber by competitive bidding, prospective bidders must have an opportunity to reach the timber to be sold. Likewise, where other timber is committed by cooperative agreement to coordinated administration with timber of the United States, there must be access to both.

(d) Accordingly, to the extent that in the judgment of the regional administrator it appears necessary to accomplish these purposes, when the United States, acting through the Bureau of Land Management, grants a right-of-way across O. and C. lands to a private operator, the private operator will be required to grant to the United States for use by it and its licensees (1) rights-of-way across lands controlled directly or indirectly by him; (2) the right to use, to the extent indicated in §§ 115.163 and 115.164, any portions of the road system or rights-of-way controlled directly or indirectly by the private operator which is adequate or can economically be made adequate to accommodate the probable normal requirements of both the operator and of the United States and its licensees, and which form an integral part of or may be added to the road system with which the requested right-of-way will connect; (3) the right to extend such road system across the operator's lands to reach federal roads or timber; and (4) in addition, in the limited circumstances set forth in § 115.162 (b), the right to use certain other roads and rights-of-way. The permit will describe by legal subdivisions the lands of the operator as to which the United States receives rights. In addition, the extent and duration of the rights received by the United States will be specifically stated in the permit and ordinarily will embrace only those portions of such road system, rights-of-way and lands as may be actually needed for the management and removal of federal timber, or other timber committed by a cooperative agreement to coordinated administration with timber of the United States.

(e) When the United States or a licensee of the United States uses any portion of a permittee's road system for the removal of forest products, the permittee will be entitled to receive just compensation, including a fair share of the maintenance and amortization charges attributable to such road, and to prescribe reasonable road operating rules, in accordance with §§ 115.165–115.169.

(f) As some examples of how this policy would be applied in particular instances, the United States may issue a permit under §§ 115.154–115.179 without requesting any rights with respect to roads, rights-of-way or lands which the regional administrator finds will not be required for management of or access to federal timber, or timber included in a cooperative agreement. Where, however, the regional administrator finds that there is a road controlled directly or indirectly by the applicant, which will be needed for such purposes and which he finds either has capacity to accommodate the probable normal requirements both of the applicant and of the Government and its licensees, or such additional capacity can be most economically provided by an investment in such road system by the Government rather than by the construction of a duplicate road, he may require, for the period of time during which the United States and its licensees will have need for the road, the rights to use the road for the marketing and management of its timber and of timber included in a cooperative agreement in return for the granting of rights-of-way across O. and C. lands, and an agreement that the road builder will be paid a fair share of the cost of the road and its maintenance. Where it appears to the regional administrator that such a road will not be adequate or cannot economically be enlarged to handle the probable normal requirements both of the private operator and of the United States and its licensees, or even where the regional administrator has reasonable doubt as to such capacity, he will not request rights over such road. Instead, the Bureau will make provision for its own road system either by providing in its timber sale contracts that in return for the road cost allowance made in fixing the appraised value of the timber, timber purchasers will construct or extend a different road system, or by expending for such construction or extension monies appropriated for such purposes by the Congress, or, where feasible, by using an existing duplicating road over which the Government has obtained road rights. In such circumstances, however, road cost and maintenance allowances made in the stumpage price of O. and C. timber will be required to be applied to the road which the Bureau has the right to use, and thereafter will not in any circumstances be available for amortization or maintenance costs of the applicant's road.

(g) When a right-of-way permit is issued for a road or road system over which the United States obtains rights of use for itself and its licensees, the regional administrator will seek to agree with the applicant respecting such matters as the time, route, and specifications for the future development of the road system involved; the portion of the capital and maintenance costs of the road system to be borne by the timber to be transported over the road system by the United States and its licensees; a formula for determining the proportion of the capacity of the road system which is to be available to the United States and its licensees for the transportation of forest products; and other similar matters respecting the use of the road by the United States and its licensees and the compensation payable therefor. To the extent that any such matter is not embraced in such an agreement, it will be settled by negotiation between the permittee and the individual licensees of the United States who use the road, and, in the event of their disagreement, by private arbitration between them in accordance with the laws of the State of Oregon.

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§ 115.156 *Definitions.* Except as the context may otherwise indicate, as the terms are used in §§ 115.154–115.179:

(a) "Bureau" means Bureau of Land Management.

(b) "Timber of the United States" or "federal timber" means timber owned by the United States or managed by any agency thereof, including timber on allotted and tribal Indian lands in the O. and C. area.

(c) "Regional Administrator" means the Regional Administrator, Region I, Bureau of Land Management, or his authorized representative.

(d) "O. and C. lands" means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, other lands administered by the Bureau under the provisions of the act approved August 28, 1937, and the public lands administered by the Bureau of Land Management which are in Oregon and in and west of Range 8 E., Willamette Meridian, Oregon.

(e) "District Forester" means a District Forester of the Bureau who is stationed in the O. and C. area.

(f) "Tramroads" include tramways, and wagon or motor-truck roads to be used in connection with logging, and the manufacturing of lumber; it also includes railroads to be used principally for the transportation, in connection with such activities, of the property of the owner of such railroad.

(g) "Management" means police protection, fire presuppression and suppression, inspection, cruising, reforesting, thinning, stand improvement, inventorying, surveying, construction and maintenance of improvements, disposal of land, the eradication of forest insects, pests and disease, and other activities of a similar nature.

(h) "Licensee" of the United States is, with respect to any road or right-of-way, any person who is authorized to remove timber or forest products from lands of the United States, or to remove timber or forest products from other lands committed by a cooperative agreement to coordinated administration with the timber of the United States over such road or right-of-way while it is covered by an outstanding permit, or while a former permittee is entitled to receive compensation for such use under the provisions of these regulations. A licensee is not an agent of the United States.

(i) "Direct control" of a road, right-of-way, or land, by an applicant for a permit hereunder means that such applicant has authority to permit the United States and its licensees to use such road, right-of-way or land in accordance with §§ 115.154–115.179.

(j) "Indirect control" of a road, right-of-way, or land, by an applicant hereunder means that such road, right-of-way, or land, is not directly controlled by him but is subject to use by him or by:

(1) A principal, disclosed or undisclosed, of the applicant; or

(2) A beneficiary of any trust or estate administered or established by the applicant; or

(3) Any person having or exercising the right to designate the immediate destination of the timber to be transported over the right-of-way for which application is made; or

(4) Any person who at any time has owned, or controlled the disposition of the timber to be transported over the right-of-way applied for, and during the 24 months preceding the filing of the application has disposed of such ownership or control to the applicant or his predecessor, under an agreement reserving or conferring upon the grantor the right to share directly or indirectly in the proceeds realized upon the grantee's disposal to third persons of the timber or products derived therefrom or the right to reacquire ownership or control of all or any part of the timber prior to the time when it undergoes its first mechanical alteration from the form of logs; or

(5) Any person who stands in such relation to the applicant that there is liable to be absence of arm's length bargaining in transactions between them relating to such road, rights-of-way, or lands.

§ 115.157 *Nature of permit.* (a) Permits for rights-of-way for tramroads, do not constitute easements, and do not confer any rights on the permittee to any material for construction or other purposes except, in accordance with the provisions of §§ 115.174 and 115.178, such materials as may have been placed on such lands by a permittee. The permits are merely nonexclusive licenses to transport forest products owned by the permittee. Such permits may be canceled pursuant to § 115.176.

(b) A permittee may not authorize other persons to use the right-of-way for the transportation of forest products which are not owned by the permittee. Any person, other than the permittee or a licensee of the United States who desires to use the right-of-way for such purposes, is required to make application therefor and to comply with all the provisions of these regulations relating to applications and applicants: *Provided, however,* That upon the request of a permittee the regional administrator may, with respect to an independent contractor who desires to use such right-of-way for the transportation of forest products owned by such independent contractor and derived from timber or logs acquired by him from such permittee, waive the requirements of this sentence. Where the right-of-way involved has been substantially improved by the holder of an outstanding permit, any subsequent permit issued for the same right-of-way will be conditioned upon the subsequent permittee's agreement while the prior permit is outstanding, to be bound by the road rules of, and to pay fair compensation to, the prior permittee, such rules and compensation to be agreed upon by the prior and subsequent permittee in accordance with the procedures and standards established by the regulations in §§ 115.166, 115.168, and 115.169.

§ 115.158 *Filing of application.* (a) An application for a permit for a right-of-way over the O. and C. lands must be submitted in duplicate on Form 4–410 and filed in the office of the appropriate district forester. Application forms will be furnished by the regional administrator and the district foresters upon request.

(b) Any application filed hereunder, including each agreement submitted by the applicant as a part thereof or as a condition precedent to the issuance of a permit, may be withdrawn by the applicant by written notice delivered to the regional administrator prior to the time the permit applied for has been issued to, and accepted by, the applicant.

§ 115.159 *Construction in advance of permit.* The regional administrator may grant an applicant authority to construct improvements on a proposed right-of-way prior to a determination whether the permit should issue. Such advance authority shall not be construed as any representation or commitment by the regional administrator that a permit will issue. Upon demand by the regional administrator, the applicant will fully and promptly comply with all the requirements imposed under and by §§ 115.154–115.179. Advance construction will not be authorized unless and until applicant has complied with §§ 115.158, 115.161, 115.162, and 115.170.

§ 115.160 *Trespass.* The mere filing of an application under §§ 115.154–115.179 does not authorize the applicant to use the right-of-way in any manner or for any purpose until written permission therefor has been duly executed by the regional administrator and delivered to the applicant. Any unauthorized use of a proposed right-of-way or of any other O. and C. land constitutes a trespass for which the trespasser is liable in damages to the United States. Until such trespass claim is fully satisfied or the trespasser has posted a surety bond satisfactory to the regional administrator conditioned upon the full payment to the United States of the damages as finally determined by the appropriate officer of the Bureau or the Department of the Interior, a permit will not be issued to the applicant for the proposed right-of-way so used, or for any other right-of-way, nor shall any timber be sold to him.

§ 115.161 *Contents of application.* (a) An individual applicant and each member of any unincorporated association which is an applicant must state in the application whether he is a native born or a naturalized citizen of the United States. Naturalized citizens will be required to furnish evidence of naturalization pursuant to the provisions of Part 137 of this chapter (Circular No. 1726, March 18, 1949; 14 F. R. 1383).

(b) An application by a private corporation must be accompanied by two copies of its articles of incorporation, one of which must be certified by the proper official of the company under its corporate seal, or by the secretary of the State where organized. A corporation organized in a State other than Oregon must submit a certificate issued by the State of Oregon attesting that the corporation is authorized to transact business within that State. The requirements of this paragraph shall be deemed satisfied if the corporation, having once filed the required documents, makes specific reference to the date and case number of such previous applications, states what changes, if any, have been made since the prior filings, and includes a statement that the right of the company to do business in the State of Oregon has not lapsed or terminated.

(c) Where the application is for a right-of-way on any portion of which the applicant proposes to construct a road, it must be accompanied by two copies of a map prepared on a scale of 4 inches or 8 inches to the mile, showing the survey of the right-of-way so that it may be accurately located on the ground. The map should comply with the following requirements, except as the regional ad-

ministrator may waive in any particular instance all or any of such requirements:

Courses and distances of the center line of the right-of-way should be given; the courses referred to the true meridian and the distance in feet and decimals thereof. The initial and terminal points of the survey must be accurately connected by course and distance to the nearest readily identifiable corner of the public land surveys, or, if there be no such corner within two miles, then connected to two permanent and prominent monuments or natural objects. All subdivisions of the public lands surveys, any part of which is within the limits of the survey, should be shown in their entirety, based upon the official subsisting plat with subdivisions, section, township, and range clearly marked. The width of the right-of-way should be given; and if not of uniform width, the locations and amount of change must be definitely shown. There shall also be a statement on the face of or appended to the map indicating the grade and usable width of the road to be constructed, the type of material which will be used for the surface, the type and extent of the drainage facilities, and the type of construction and estimated capacity of any bridges. The map should bear upon its face the statement of the person who made the survey, if any, and the certificate of the applicant; such statement and certificate should be as set out in Forms Nos. 4–411 and 4–412 respectively.

(d) Where the application is for the use of an existing road, a map adequate to show the location thereof will be required, together with a statement of the specific nature and location of any proposed improvements to such road. A blank map suitable for most cases may be procured from the appropriate district forester.

(e) Every application for a right-of-way must also be accompanied by a diagram indicating the roads and rights-of-way which form an integral part of the road system with which the requested right-of-way will connect, the portions of such road system which the applicant directly controls within the meaning of § 115.156 (i), the portions thereof which the applicant indirectly controls within the meaning of § 115.156 (j), and the portions thereof as to which the applicant has no control within the meaning of such sections. As to the portions over which the applicant has no control, he must furnish a statement showing, for the two years preceding the date of the filing of the application, all periods of time that he had direct or indirect control thereof, and the date and nature of any changes in such control. The diagram shall also contain the name of the person whom the applicant believes directly controls any portion of such road system which the applicant does not directly control. Where a right-of-way for a railroad is involved, the applicant must indicate which portions of the right-of-way will be available for use as truck roads upon the removal of the rails and ties and the probable date of such removal. Blank diagram forms, suitable for most cases, may be obtained from the appropriate district forester.

§ 115.162 *Right-of-way and road use agreement; recordation.* (a) Where, in the judgment of the regional administrator, it appears necessary in order to carry out the policy set forth in § 115.155, he may require the applicant, as a condition precedent to the issuance of the permit:

(1) To grant to the United States, for use by it and its licensees and permittees, rights-of-way across lands in the O. and C. area directly controlled by the applicant; and as to lands in such area which are indirectly controlled by him, either to obtain such rights for the United States or to make a showing satisfactory to the regional administrator that he has negotiated therefor in good faith and to waive as to the United States, its licensees and permittees any exclusive or restricted right he may have to such lands as are indirectly controlled by him.

(2) In addition, to agree to permit the United States and its licensees, upon the payment of fair compensation as hereinafter provided, to use under the terms and conditions of §§ 115.154–115.179, such portion as the applicant directly controls of the road system and rights-of-way which are an integral part of or may be added to the road system with which the right-of-way applied for will connect, and as to the portions of such road system or rights-of-way as the applicant indirectly controls, either to obtain such rights for the United States and its licensees or to make a showing satisfactory to the regional administrator that he has negotiated therefor in good faith and, in such latter circumstance, to waive as to the United States and its licensees any exclusive or restricted right he may have in such portion of the road system and rights-of-way.

(b) In addition to the private road systems and rights-of-way described in paragraph (a) of this section, in the event the applicant controls directly or indirectly other roads or rights-of-way in any O. and C. area where the Director of the Bureau finds that, as of the time of filing or during the pendency of the application, the United States is unreasonably denied access to its timber for management purposes or where, as of such time, competitive bidding by all prospective purchasers of timber managed by the Bureau in the O. and C. area, or of other Federal timber intermingled with or adjacent to such timber, is substantially precluded by reason of the applicant's control, direct or indirect, of such roads or rights-of-way, the Director may require the applicant to negotiate with the regional administrator an agreement granting to the United States and its licensees the right to use, in accordance with the terms and conditions of §§ 115.154–115.179, such portion of such roads or rights-of-way as may be necessary to accommodate such management or competitive bidding.

(c) Where, in the judgment of the regional administrator, it is consistent with the policy set forth in § 115.155, he may issue a permit without requesting the applicant to grant any rights to the United States under this section.

(d) Any grant of rights to the United States under this section shall be executed on Form 4–413, which shall constitute and form a part of any permit issued upon the application involved. The applicant shall record such agreement in the office of land records of the county or counties in which the roads, rights-of-way, or lands, subject to the agreement are located, and submit evidence of such recordation to the regional administrator.

§ 115.163 *Use by the United States and its licensees of rights received from a permittee.* The use by the United States and its licensees of any of the rights received from a permittee hereunder shall be limited to that which is necessary for management purposes, or to reach, by the most reasonably direct route, involving the shortest practicable use of the permittee's road system, a road or highway which is suitable for the transportation of forest products in the type and size of vehicle customarily used for such purposes and which is legally available for public use for ingress to and the removal of forest products from Government lands or from other lands during such periods of time as the timber thereon may be committed by a cooperative agreement to coordinated administration with timber of the United States. However, the type and size of vehicle which may be used by the licensee on the permittee's road shall be governed by § 115.165 or § 115.168.

§ 115.164 *Duration and location of rights granted or received by the United States.* The rights-of-way granted by the United States under any permit issued under § 115.173, subject to the provisions of § 115.176, will be for a stated term or terms which may vary for each portion of the right-of-way granted; such term or terms will normally be coincident with the probable period of use for the removal of forest products by the permittee and any successor in interest of the various portions of the right-of-way requested. In the same manner the permit will also state the duration of the rights of the United States to use and to permit its licensees to use, and the location by legal subdivisions of, each of the various portions, if any, of the roads, rights-of-way, and lands which a permittee hereunder authorizes the United States and its licensees to use; and, similarly, the duration of such rights received by the United States will normally be coincident with the probable period of use for the removal of forest products, by the United States and its existing and prospective licensees, of such roads, rights-of-way, and lands.

§ 115.165 *Permittee's agreement with United States respecting compensation and adjustment of road use.* (a) Where the United States receives rights over any road, right-of-way, or lands, controlled directly or indirectly by a permittee, the regional administrator will seek to arrive at an advance agreement with the permittee respecting any or all of such matters as the time, route, and specifications for the development of the road system in the area; the total volume of timber to be moved over such road system, and the proportion of

such timber which belongs to the United States or is embraced in a cooperative agreement for coordinated management with timber of the United States managed by the Bureau; the consequent proportion of the capital costs of the road system to be borne by such timber of the United States or embraced in such cooperative agreement; the period of time over, or rate at which, the United States or its licensees shall be required to amortise such capital costs; provisions for road maintenance; the use, in addition to the uses set forth in § 115.163, which the United States and its licensees may make of the road system involved; a formula for determining the proportionate capacity of the road system or portions thereof which shall be available to the United States and its licensees for the transportation of forest products; the amount and type of insurance to be carried, and the type of security to be furnished by licensees of the United States who use such road; and such other similar matters as the regional administrator may deem appropriate. To the extent necessary to fulfill the obligations of the United States under any such advance agreement, subsequent contracts for the sale of timber managed by the Bureau and tapped by such road system, and subsequent cooperative agreements for the coordinated management of such timber with other timber, will contain such provisions as may be necessary or appropriate to require such licensees to comply with the terms of the advance agreement. Where such an advance agreement between the United States and the permittee includes provisions relating to the route and specifications for extensions of the road system involved, the regional administrator may agree that upon the filing of proper applications in the future the applicant or his successor in interest shall receive the necessary permits for such road extensions as may cross lands managed by the Bureau: *Provided, however,* That the applicant shall have substantially complied with the terms of such advance agreement and of the outstanding permits theretofore issued to him.

(b) The provisions of §§ 115.166–115.169 shall not be applicable to any matters embraced in an agreement made pursuant to this section.

§ 115.166 *Agreements and arbitration between permittee and licensee respecting compensation payable by licensee to permittee for use of road.* (a) In the event the United States exercises the rights received from a permittee hereunder to license a person to remove forest products over any road, right-of-way, or lands, of the permittee or of his successor in interest, to the extent that such matters are not covered by an agreement under § 115.165, such licensee will be required to pay the permittee or his successor in interest such compensation and to furnish him such security, and to carry such liability insurance as the permittee or his successor in interest and the licensee may agree upon. If the parties do not agree, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 115.169.

(b) The arbitrators shall base their award as to the compensation to be paid by the licensee to the permittee or his successor in interest upon the amortization of the replacement costs for a road of the type involved, including in such replacement costs an extraordinary cost peculiar to the construction of the particular road involved and subtracting therefrom any capital investment made by the United States or its licensees in the particular road involved or in improvements thereto used by and useful to the permittee or his successor in interest plus a reasonable interest allowance on the resulting cost figure, taking into account the risk involved, plus costs of maintenance if furnished by the permittee or his successor, including costs of gates and gateman. In arriving at the amortization item, the arbitrators shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved and the volume of timber, currently merchantable, which probably will be moved from all sources over such road. The arbitrators shall also take into account the extent to which the use which the licensee might otherwise economically make of the road system is limited by § 115.163. In addition, the arbitrators may fix the rate at which payments shall be made by the licensee during his use of the road. The arbitrators shall require the licensee to provide adequate bond, cash deposit, or other security to indemnify the permittee or his successor in interest against failure of the licensee to comply with the terms of the award and against damage to the road not incident to normal usage, and for any other reasonable purpose, and also to carry appropriate liability insurance covering any additional hazard and risks which may accrue by reason of the licensee's use of the road.

(c) Where improvements or additions are required to enable a licensee to use a road or right-of-way to remove timber or forest products, the cost of such improvements will be allowable to the licensee.

(d) The full value at current stumpage prices will be allocable against a licensee for all timber to be cut, removed, or destroyed by the licensee on a permittee's land in the construction or improvement of the road involved.

§ 115.167 *Compensation payable by United States to permittee for use of road.* In the event the United States itself removes forest products over any road or right-of-way of the permittee or his successor in interest, the United States, if there has been no agreement under § 115.165 covering the matter, shall pay to the permittee or his successor in interest reasonable compensation as determined by the regional administrator, who shall base his determination upon the same standards established by §§ 115.154–115.179 for arbitrators in the determination of the compensation to be paid by a licensee to a permittee: *Provided, however,* That no bond or other security or liability insurance is to be required of the United States. When the United States constructs or improves a road on a permittee's land or right-of-way it shall pay to the permittee the full value at current stumpage prices of all timber of the permittee cut, removed, or destroyed in the construction or maintenance of such road or road improvements. Current stumpage prices shall be determined by the application of the standard appraisal formula, used in appraising O. and C. timber for sale, to the volume and grade of timber. Such volume and grade shall be determined by a cruise made by the permittee, or, at his request, by the regional administrator. If either the permittee or the regional administrator does not accept the cruise made by the other, the volume and grade shall be determined by a person or persons acceptable both to the permittee and the regional administrator.

§ 115.168 *Agreements and arbitration between permittee and licensee respecting adjustment of road use.* (a) When the United States exercises the right received under §§ 115.154–115.179 to use or to license any person to use a road of a permittee, the permittee or his successor in interest shall not unreasonably obstruct the United States or such licensee in such use. If there has been no agreement under § 115.165 covering such matters, the permittee shall have the right to prescribe reasonable operating regulations, to apply uniformly as between the permittee and such licensee, covering the use of such road for such matters as speed and load limits, scheduling of hauls during period of use by more than one timber operator, coordination of peak periods of use, and such other matters as are reasonably related to safe operations and protection of the road; if the capacity of such road should be inadequate to accommodate the use thereof which such licensee and permittee desire to make concurrently, they shall endeavor to adjust their respective uses by agreement.

(b) If the permittee and such licensee are unable to agree as to the reasonableness of such operating regulations or on the adjustment of their respective uses where the capacity of the road is inadequate to accommodate their concurrent use, then upon the written request of either party delivered to the other party, the matter shall be referred to and finally determined by arbitration in accordance with the procedures established by § 115.169.

(c) The arbitrators may make such disposition of a dispute involving the reasonableness of such operating regulations as appears equitable to them, taking into account the capacity and the construction of the road and the volume of use to which it will be subjected. In the determination of a dispute arising out of the inadequacy of the capacity of a road to accommodate the concur-

rent use by a permittee and a licensee, the arbitrators may make such disposition thereof as appears equitable to them, taking into account, among other pertinent facts, the commitments of the permittee and the licensee with respect to the cutting and removal of the timber involved and the disposition of the products derived therefrom; the extent to which each of the parties may practicably satisfy any of the aforesaid commitments from other timber currently controlled by him; the past normal use of such road by the permittee; the extent to which federal timber has contributed to the amortization of the capital costs of such road; and the extent to which the United States or its licensees have enlarged the road capacity.

§ 115.169 *Arbitration procedure.* (a) Within ten days after the delivery of a written request for arbitration under § 115.166 or § 115.168, each of the parties to the disagreement shall appoint an arbitrator and the two arbitrators thus appointed shall select a third arbitrator. If either party fails to appoint an arbitrator as provided herein, the other party may apply to a court of record of the State of Oregon for the appointment of such an arbitrator, as provided by the laws of such State. If within ten days of the appointment of the second of them, the original two arbitrators are unable to agree upon a third arbitrator who will accept the appointment, either party may petition such a court of record of the State of Oregon for the appointment of a third arbitrator. Should any vacancy occur by reason of the resignation, death or inability of one or more of the arbitrators to serve, the vacancy shall be filled according to the procedures applicable to the appointment of the arbitrator whose death, disability, or other inability to serve, created the vacancy.

(b) By mutual agreement, the parties may submit to a single arbitration proceeding controversies arising under both §§ 115.166 and 115.168.

(c) The arbitrators shall hear and determine the controversy and make, file, and serve their award in accordance with the substantive standards prescribed in §§ 115.166 and 115.168 for the type of controversy involved and in accordance with the procedures established by the laws of the State of Oregon pertaining to arbitration proceedings. A copy of the award shall also be served at the same time upon the regional administrator, either personally or by registered mail.

(d) Costs of the arbitration proceedings shall be assessed by the arbitrators against either or both of the parties, as may appear equitable to the arbitrators, taking into account the original contentions of the parties, the ultimate decision of the arbitrators and such other matters as may appear relevant to the arbitrators.

§ 115.170 *Payment required for O. and C. timber.* An applicant will be required to pay to the regional administrator, in advance of the issuance of the permit, the full stumpage value as determined by the regional administrator of the estimated volume of all timber to be cut, removed, or destroyed, on O. and C. lands in the construction or operation of the road.

§ 115.171 *Payment to the United States for road use.* (a) A permittee shall pay a basic fee of five dollars per year per mile or fraction thereof for the use of any existing road or of any road constructed by the permittee upon the right-of-way except that in those cases where the permittee has executed under § 115.162 an agreement respecting the use of roads, rights-of-way or lands, no such basic fee shall be paid. If the term of the permit is for five years or less, the entire basic fee must be paid in advance of the issuance of the permit. If the term of the permit is longer than five years, the basic fee for each five-year period or for the remainder of the last period, if less than five years, must be paid in advance at five-year intervals.

(b) In addition, where the permittee receives a right to use a road constructed or acquired by the United States, which is under the administrative jurisdiction of the Bureau of Land Management, he will be required to pay to the United States for the use thereof, except where he transports forest products purchased from the United States through the Bureau, a fee to be determined by the regional administrator who shall base his determination upon the amortization of the replacement costs for a road of the type involved, together with a reasonable interest allowance on such costs, plus costs of maintenance if furnished by the United States and any extraordinary costs peculiar to the construction or acquisition of the particular road. In arriving at the amortization item, the regional administrator shall take into account the probable period of time, past and present, during which such road may be in existence and the volume of timber which has been moved and the volume of timber, currently merchantable, which probably will be moved from all sources over such road. The regional administrator may fix the rate at which payments shall be made by the permittee during his use of the road: *Provided, however,* That this paragraph shall not apply where payment for such road use to another permittee is required under §§ 115.154–115.179.

§ 115.172 *Bond in connection with existing roads.* An applicant for a permit to use an existing Government road which is under the administrative jurisdiction of the Bureau for timber hauling purposes other than for federal timber acquired under a free-use permit, will be required, for the protection of such existing road, to execute a bond on Form 4–414 in an amount to be determined by the regional administrator but in no event less than five hundred dollars ($500) per mile or fraction thereof, conditioned on compliance with §§ 115.154–115.179 and the terms and conditions of the permit.

§ 115.173 *Approval of permit.* (a) Upon the applicant's compliance with the appropriate provisions of §§ 115.15[illegible] 115.179 and if it is determined that the approval of the application will be in the public interest, the regional administrator may, in his discretion, issue an appropriate permit, upon Form 4–415.

(b) The regional administrator may waive the requirements of §§ 115.161 (c) and (e) and 115.172, in the case of a natural person who applies for a right-of-way for not to exceed a period of twelve weeks. Not more than one such waiver shall be allowed in each consecutive twelve calendar months on behalf of or for the benefit of the same person.

§ 115.174 *Terms and conditions of permit.* (a) As to all permits: Every permittee shall agree:

(1) To comply with the applicable regulations in effect as of the time when the permit is issued and, as to the permittee's roads as to which the United States has received rights under § 115.162, with such additional regulations as may be issued from time to time relating to the use of roads for the purpose of access by properly licensed hunters and fishermen and by other recreationalists to lands of the United States in the O. and C. area which are suitable for such recreational purposes, where such use will not unreasonably interfere with the use of the road by the permittee for the transportation of forest products or unduly enhance the risk of fire, collision, or other hazards on such road and on lands in the vicinity thereof. If, notwithstanding the request of the regional administrator that the permittee allow use of a road in conformity with such additional regulations, the permittee shall unreasonably withhold his assent, the regional administrator shall refer the disagreement to the Director of the Bureau for his consideration, and, if the Director concurs in the conclusion of the regional administrator and if the matter is still in dispute, he shall refer the matter to the Secretary of the Interior for his consideration. In the event of the Secretary's concurrence in the conclusions of the regional administrator and, if the permittee nevertheless unreasonably withholds such assent, the United States may institute such judicial proceedings as may be appropriate to enforce said regulations.

(2) Not to cut, remove, or destroy any timber not previously purchased on the right-of-way without having first obtained specific authority from the regional administrator and making payment therefor.

(3) To take adequate precaution to prevent and suppress forest, brush, and grass fires; to endeavor with all available personnel to suppress any fire originating on or threatening the right-of-way; to do no burning on or near the right-of-way without State permit during the seasons that permits are required but in any event to set no fire on or near the right-of-way that will result in damage to any natural resource or improvement.

(4) To submit to arbitration proceedings and to be bound by the resulting arbitral awards, pursuant to §§ 115.166, 115.168, and 115.169.

(5) In the event that the United States acquires by purchase or eminent domain the land or any interest therein, over which there passes a road which the United States has acquired the right to use under § 115.162, to waive compensation for the value of the road, equivalent to the proportion that the amount the United States has contributed bears to the total actual cost of construction of the road. Such contribution shall include any investment in or amortization of the cost of such road, or both, as the case may be, made by the United States or a licensee either by way of direct expenditures upon such road, or by way of payment by the United States or a licensee to the permittee, or by way of allowance made by the United States to the permittee in any timber sales contract for such amortization or capital investment.

(6) To construct all roads and other improvements as described in the application for the permit, except as the regional administrator may authorize modification or abandonment of any such proposed construction.

(7) To use the permit and right-of-way afforded subject to all valid existing rights, to such additional rights-of-way as may be granted under these regulations, to a reservation of rights-of-way for ditches and canals constructed under authority of the United States, and to a reservation of all fissionable source materials in accordance with the act of August 1, 1946 (60 Stat. 755).

(8) Not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and to require an identical provision to be included in all subcontracts.

(9) Except as the regional administrator may otherwise permit or direct to clean up and remove from the road and right-of-way within six months after the expiration or other termination of the permit, all debris, refuse, and waste material which may have resulted from his operations and use of said road; to repair all damage to said road resulting directly or indirectly from his use thereof; and to remove therefrom all structures, timbers, and other objects that may have been installed or placed thereon by him in connection with said operations or use: *Provided, however,* That the road and all usable road improvements shall be left in place.

(b) As to permits for the use of an existing road: In addition, every permittee to whom a permit is issued for the use of an existing road is required to agree:

(1) To maintain such a road in an adequate and satisfactory condition or to arrange therefor with the other users of the road. In the absence of satisfactory performance, the regional administrator may have such maintenance work performed as may be necessary in his judgment, determine the proportionate share allocable to each user, and collect the cost thereof from the parties or the sureties on the bonds furnished by said parties.

(2) Upon the expiration or other termination of his right to its use, to leave said road and right-of-way in at least as good a condition as existed prior to the commencement of his use.

§ 115.175 *Assignment of permit.* Any proposed assignment of a permit must be submitted in duplicate, within 90 days after the date of its execution, to the Regional administrator for approval, accompanied by the same showing and undertaking by the assignee as is required of an applicant by §§ 115.161 and 115.162; and must be supported by a stipulation that the assignee agrees to comply with and be bound by the terms and conditions of the permit and the applicable regulations of the Department of the Interior in force as of the date of such approval of the assignment.

§ 115.176 *Causes for termination of permittee's rights.* (a) The Regional Administrator in his discretion may elect upon 30 days' notice to terminate any permit or right-of-way issued under §§ 115.154–115.179 if:

(1) In connection with the application made therefor, the applicant represented any material fact knowing the same to be false, or made such representation in reckless disregard of the truth; or

(2) A permittee, subsequent to the issuance of a permit or right-of-way to him, represents any material fact to the regional administrator, in accordance with any requirement of such permit or §§ 115.154–115.179, knowing such representation to be false, or makes such representation in reckless disregard of the truth.

(b) The regional administrator, in his discretion may elect to terminate any permit or right-of-way issued under §§ 115.154–115.179, if the permittee shall fail to comply with any of the provisions of such regulations or make default in the performance or observation of any of the conditions of the permit, and such failure or default shall continue for 60 days after service of written notice thereof by the regional administrator.

(c) Notice of such termination shall be served personally or by registered mail upon the permittee, shall specify the misrepresentation, failure or default involved, and shall be final, subject, however, to the permittee's right of appeal.

(d) Termination of the permit and of the right-of-way under this section shall not operate to terminate any right granted to the United States pursuant to §§ 115.154–115.179, nor shall it affect the right of the permittee, after the termination of his permit and right-of-way to receive compensation and to establish road operating rules with respect to roads controlled by him which the United States has the right to use and to permit its licensees to use; nor shall it relieve the permittee of his duty under §§ 115.154–115.179 to submit to and be bound by arbitration pursuant to §§ 115.166, 115.168, and 115.169.

§ 115.177 *Remedies for violations by licensee.* (a) No licensee of the United States will be authorized to use the roads of a permittee except under the terms of a timber sale contract or a cooperative agreement with the United States which will require the licensee to comply with all the applicable provisions of §§ 115.154–115.179, and any agreements or awards made pursuant thereto. If a licensee fails to comply with the regulations, agreements, or awards, the regional administrator will take such action as may be appropriate under the provisions of the timber sale contract or cooperative agreement.

(b) A permittee who believes that a licensee is violating the provisions of such a timber sale contract or cooperative agreement pertaining to use of the permittee's roads, rights-of-way, or lands, may petition the regional administrator, setting forth the grounds for his belief, to take such action against the licensee as may be appropriate under the contract or the cooperative agreement. In such event the permittee shall be bound by the decision of the regional administrator subject, however, to a right of appeal pursuant to § 115.179 and subject, further, to the general provisions of law respecting review of administrative determinations. In the alternative, a permittee who believes that a licensee has violated the terms of the timber sale contract or cooperative agreement respecting the use of the permittee's roads may proceed against the licensee in any court of competent jurisdiction to obtain such relief as may be appropriate in the premises.

§ 115.178 *Disposition of property on termination of permit.* Upon the expiration or other termination of the permittee's rights, in the absence of an agreement to the contrary, the permittee will be allowed six months in which to remove or otherwise dispose of all property or improvements, other than the road and usuable improvements to the road, placed by him on the right-of-way, but if not removed within this period, all such property and improvements shall become the property of the United States.

§ 115.179 *Appeals.* An appeal pursuant to the rules of practice, Part 221 of this chapter, may be taken from any final decision of the regional administrator, to the Director, Bureau of Land Management, and, from the latter's decision to the Secretary of the Interior.

Sections 115.154–115.179 supersede 43 CFR, Cum. Supp., 115.114–115.127 (Circular No. 1521, January 5, 1943).

NOTE: The reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

MARION CLAWSON,
Director.

Approved: April 5, 1950.

OSCAR L. CHAPMAN,
Secretary of the Interior.

[F. R. Doc. 50-2953; Filed, Apr. 6, 1950; 8:51 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1752]

PART 148—EXCHANGES OF PRIVATELY OWNED LANDS WITHIN NATIONAL FORESTS FOR NATIONAL FOREST LAND OR TIMBER

The following text is substituted for §§ 148.1 to 148.19, inclusive:

AUTHORITY: §§ 148.1 to 148.15 issued under R. S. 2478; 43 U. S. C. 1201.

§ 148.1 *Statutory authority.* The act of March 20, 1922 (42 Stat. 465, 16 U. S. C. 485) provides that when the public interests will be benefited thereby, the Secretary of the Interior is authorized, in his discretion, to accept on behalf of the United States title to any lands within national forests which, in the opinion of the Secretary of Agriculture, are chiefly valuable for national forest purposes, and in exchange therefor may patent not to exceed an equal value of such surveyed national forest land in the same State, or the Secretary of Agriculture may authorize the grantor to cut and remove an equal value of timber within the national forests in the same State; the values in each case to be determined by the Secretary of Agriculture.

§ 148.2 *Reservation of timber, minerals or easements.* The act of March 20, 1922, was amended by the Act of February 28, 1925 (43 Stat. 1090; 16 U. S. C. 486) by adding thereto section 2, which provides that either party to such an exchange may make reservations of timber, minerals, or easements, the values of which shall be duly considered in determining the values of the exchanged lands. The act provides that reservations in deeds to the United States shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the land as may be deemed necessary by the Secretary of Agriculture, and that where mineral reservations are made in lands conveyed by the United States, the patents thereto shall stipulate that whoever acquires the right to mine and remove the reserved minerals may enter and use so much of the surface as may be required for all purposes incident to mining and removing the deposits; and may mine and remove the reserved minerals, upon payment to the owner of the surface for damages to the land or improvements on the land.

All fissionable materials in the selected lands must be reserved to the United States, together with the right to prospect for, mine, and remove the same, as provided in 43 CFR 102.43.

§ 148.3 *Preliminary negotiations.* Preliminary negotiations for an exchange hereunder will be conducted with local representatives of the Forest Service. Any owner of land subject to exchange who is 21 years of age, or over (or a corporation which is authorized to own and convey real property), may initiate negotiations for exchange thereof by filing an informal offer of exchange, with local national forest officers. This offer should describe the lands which will be conveyed to the Government and the national forest land selected in exchange therefor, or if national forest timber is selected in exchange, the volume of timber or value of timber which the owner desires and the national forest land on which it is located.

Land offered or selected must be specifically described according to Government survey subdivisions. As a rule nothing less than quarter-quarter sections or forty-acre tracts (or numbered lots) may be offered or selected, except where the exchange proponent, or the Government, does not own the balance of such subdivisions, or where a portion of a forty-acre tract or lot, offered the Government is not valuable for national forest purposes, or where the United States desires to retain ownership of a portion, or portions, of a forty-acre tract or lot, selected by the proponent because of the fact that it is chiefly valuable for national forest purposes. Selected land or timber must be entirely within national forest boundaries and in the same State in which the offered lands are located.

§ 148.4 *Notice to county of exchange offer.* As soon as an agreement has been reached between the proponent and the local national forest officers in proposed exchanges involving selected values in excess of $5,000, the Forest Service will cause a written notice to be served either personally or by mail on the appropriate county officials of the county or counties in which the offered land and the selected land or timber are situated. The notice will give the location and area of the land offered in exchange as well as the amount of stumpage, if any, to be cut on the offered land by the proponent and the period allowed for the removal thereof. The notice will also give the location and either the acreage of the land selected or the total volume or value of timber to be cut in exchange for the offered land, together with the period in which such cutting rights are to be exercised. The county officials will be allowed 15 days from receipt of notice in which to file, in writing, with the Forest Supervisor or regional forester, any protests or objections to the proposed exchange. A copy of the notice to the county, with evidence of service and any response to the notice will be forwarded to the Director, Bureau of Land Management.

§ 148.5 *Application; effective date; conditional approval.*[1] Upon an agreement being reached between the exchange applicant and the local national forest officers, those officers will obtain from the applicant an application over his signature which shall recite that the applicant is of the age of 21 years or over and that he owns the land offered in exchange, or is in the process of acquiring it or has a firm contract to acquire it, and shall describe the offered land together with any reservations and exceptions he wishes to make, and will transmit the application together with their recommendation thereon to the Forest Service. If the exchange is

[1] Title 18, U. S. C. sec. 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

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land for land, and minerals in the selected lands are not reserved, the application must be supported by a statement as to the non-mineral character of that land. The statement must be signed by the applicant or someone in his behalf and must show that the person who signs it is well acquainted with the character of the land selected; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not to his knowledge any valuable mineral of any character whatsoever within the limits thereof; that the land contains no salt springs or deposits of salt in any form sufficient to render it chiefly valuable therefor; that said land is essentially non-mineral and nonsaline in character, and is not in any manner occupied or claimed adversely to the applicant. Where the application is made by a corporation, a certified copy of its articles of incorporation, and a copy of an authorization by the Board of Directors or other governing body to make the exchange, must be furnished in connection with the establishment of title (43 CFR 148.9). If the application is approved, the Forest Service will forward it by a letter, in triplicate, to the Bureau of Land Management, which will stamp the application to show the date and hour of its receipt and advise the Forest Service as to such date and hour. The Bureau of Land Management will forward a copy of the letter from the Forest Service, together with information as to the date and hour of the receipt of the application, to the district land office for notation on its records. The letter of the Forest Service shall adequately describe the lands offered and selected and shall set forth any reservations, exceptions or outstanding rights to which the offered or selected lands are subject and, when proper, shall state that an examination has shown the offered lands to be chiefly valuable for national forest purposes and not occupied by adverse claimants; that the offered lands are at least equal in value to the lands or timber selected, and that the proposed exchange is in the public interest.

The Bureau of Land Management, by the Director or other official duly delegated, unless it has reasons to do otherwise will approve the exchange offer subject to submission of acceptable title to the offered land, to full compliance by the proponent with §§ 148.1 to 148.15, inclusive, and to any protest which may be filed, and will so notify the Forest Service. If the Bureau of Land Management does not give conditional approval to the application or take other action thereon within 30 days from the time of the filing of the application in the Bureau of Land Management, the exchange shall be considered as conditionally approved and the Forest Service will proceed as hereinafter provided.

A proposed exchange which is found by the Bureau of Land Management for any reason to be unsatisfactory will be rejected, subject to appeal or to the curing of the defect.

An application filed subsequent to the application for exchange which conflicts therewith and is supported by allegations of prior right, will be transmitted to the Bureau of Land Management with appropriate recommendation.

§ 148.6 *Authorization of publication.* Upon receipt of the conditional approval of the Bureau of Land Management, or after the expiration of the 30 days allowed for such approval by § 148.5, the Forest Service will notify the proponent, arrange for publication as required by § 148.7 and will request the proponent to furnish a recorded deed, abstract or other satisfactory evidence of title and other material, as hereinafter specified.

§ 148.7 *Publication and posting.* A notice of the exchange will be published once each week for four consecutive weeks in some newspaper or newspapers designated by the regional forester and having general circulation in the county or counties in which the land offered and the land or timber selected are situated. During the period of publication a similar notice of application, supplied by the regional forester of the Forest Service, shall be posted in the office of the Forest Supervisor of the national forest or forests involved and in the land office. The notice shall describe the lands offered to the Government and lands selected by the proponent or, where national forest timber is selected, the lands on which such timber is situated, and shall state that the purpose of such notice is to allow all persons claiming the land selected or having bona fide objections to the exchange an opportunity to file their protest with the regional forester, whose address will be given. The notice shall also state that any protests or objections must be filed within 30 days after date of first publication of the notice, which date must be set out in the notice. The proof of publication will consist of statements from the publisher or the foreman or other proper employee of the newspaper in which the notice was published, with a copy of the published notice attached. The Forest Supervisor and the manager of the land office shall certify to the posting in their offices. The dates of such publication and posting must in all cases be given.

§ 148.8 *Action by Forest Service after publication; protests.* Title papers, proof of publication and other required material will be transmitted by proponent to the regional forester, who will examine such material for its adequacy and for the completeness of title. When compliance is found to be adequate and the title papers are found to be in proper form, the regional forester will transmit title papers and other material to the Bureau of Land Management. Any protest filed with the regional forester as a result of publication will be transmitted at the same time with appropriate recommendations to the Bureau of Land Management for consideration and decision. Any decision of the Director, Bureau of Land Management, will be subject to appeal to the Secretary of the Interior.

§ 148.9 *Form and execution of deed.* The deed conveying the land offered as a basis of exchange must be executed and acknowledged in the same manner as a conveyance of real property is required to be executed and acknowledged by the laws of the State in which the land is situated. The deed should recite that the consideration for the conveyance to the United States of the land offered is the exchange therefor of not exceeding an equal value of national forest land or timber, depending upon whether the exchange is one of land for land, or land for timber. The act or acts under which the exchange is made should be cited in the deed.

Such revenue stamps as are required by law must be affixed to the deed by proponent and canceled.

Where the conveyance is made by an individual it must show whether the person conveying is married or single, and if married, the wife or husband of such person, as the case may be, must join in the execution of the conveyance in such a manner as to effectually bar any right of curtesy or dower, or any claim whatsoever to the land conveyed, or it must be fully shown that under the laws of the State in which the conveyed land is situated such wife or husband has no interest whatsoever, present or prospective, which makes her or his joining in the conveyance necessary.

Where the conveyance is by a corporation, it should be recited in the instrument of transfer that it was executed pursuant to an order or by the direction of the board of directors or other governing body, a copy of which order or direction should accompany such instrument of transfer, and should bear the impression of the corporate seal. Certified copies of the articles of incorporation of the corporation showing that it is authorized to own and convey real property should accompany the deed or be included among the title papers.

§ 148.10 *Requirements where applicant reserves mineral rights.* In the case of each and every offer to exchange made under the act of March 20, 1922 (42 Stat. 465; 16 U. S. C. 485), as amended by the act of February 28, 1925 (43 Stat. 1090; 16 U. S. C. 486), where the exchange proponent reserves the rights to any or all minerals in lands offered to the United States in such an exchange, the proponent will be required to attach to or incorporate as a part of the application for exchange the conditions set out in 36 CFR 251.15. Such conditions must also be incorporated in the deed of conveyance of the offered land to the United States.

§ 148.11 *What abstract must show; authentication required; taxes; certificates.* Each conveyance must be accompanied by a duly authenticated abstract of title, except as provided in § 148.12, showing that at the time the conveyance was recorded the title was in the party conveying and that the land was free from conflicting record claims, tax liabilities, judgment or mortgage liens, pending suits or other encumbrances.

The certificate of authentication of the abstract must be signed by the recorder of deeds or other proper official, under his official seal, or by such abstractor or company as may be satisfactory to the Bureau of Land Management. The certificates must show the title memoranda to be a full, true, and complete abstract

of all matters of record or on file in the appropriate office or offices of the county or counties in which the offered land is located, including all conveyances, mortgages, or other encumbrances, judgments against the various grantors, mechanics' liens, lis pendens or other instruments which are required by law to be filed with the recording officers affecting in any manner whatsoever the title to the described land.

The authenticity of the tax records must be certified showing that all taxes levied or assessed against the land, or that could operate thereon as a lien, have been fully paid; or whether there is a tax lien although such tax is not assessed, due or payable; that there are no unredeemed tax sales and no tax deeds outstanding as shown by the records of the proper county office. In case taxes have been assessed or levied on lands conveyed to the United States and such taxes are not due and payable until some future date, the proponent, in addition to the certificate above required relative to taxes and tax assessments, may submit a sum equal to at least twice the amount of taxes paid on the land for the previous year or in lieu thereof furnish a bond in like amount with qualified corporate surety, in order to indemnify the United States against loss for the taxes assessed or levied but not yet due and payable.

The absence of judgment liens or pending suits against the various grantors which might affect the title of the land conveyed must be shown by the official certificate of the clerks of the courts of record, whose judgments, under the laws of the United States or the State in which the land is situated, would be a lien on the land conveyed.

§ 148.12 *Title insurance; certificate of title.* A policy of title insurance, or a certificate of title, may be accepted in lieu of an abstract when issued by a title company which is recognized by the Bureau of Land Management. A policy of title insurance, when furnished, must be in substantially the form approved by the Solicitor of the Department of the Interior and must be free from conditions and stipulations not acceptable to the Bureau of Land Management. A certificate of title will be accepted only where the certificate is made to the Government, or expressly for its benefit, and where the interests of the Government will be sufficiently protected thereby.

§ 148.13 *Right reserved to reject exchange offer.* Applications to select either land or timber under the provisions of the act of March 20, 1922 (42 Stat. 465; 16 U. S. C. 485) will not defeat the right of the United States to withdraw or reserve the land for such purposes or uses as may be proper prior to the filing of the recorded deed to the offered land and evidence of valid title thereto with the Regional Forester.

§ 148.14 *Acceptance of title.* Title papers will be reviewed by the Bureau of Land Management, and, if title to the offered land is found to be acceptable and the application otherwise is found to be satisfactory, the Director of the Bureau of Land Management will accept the title and will so notify the Chief of the Forest Service, and where lands have been selected will issue patent. When only timber is selected, the Forest Service will issue the necessary permits for cutting thereof. The offered lands so conveyed, upon the acceptance of title, will become parts of the national forests within whose boundaries they are located.

If the Bureau of Land Management finds additional title curative material is necessary, it will request such material of the Forest Service, setting forth in detail the type of curative data or action necessary. It will be the responsibility of the Forest Service to obtain such material, or have such action taken, and to forward necessary documents or proof of action to the Bureau of Land Management.

§ 148.15 *Special acts authorizing forest exchanges.* Special acts providing for exchanges of lands in national forests are listed below.[3] Special regulations governing these acts have not been prepared (except as shown in the list), but exchanges thereunder must be made under §§ 148.1 to 148.15, inclusive, modified, however, to meet the limitations, conditions, and provisions of the acts mentioned.

NOTE: The reporting requirement of this regulation has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

ROSCOE E. BELL,
Associate Director.

Approved: April 7, 1950.

CHARLES F. BRANNAN,
Secretary of Agriculture.

Approved: May 5, 1950.

OSCAR L. CHAPMAN,
Secretary of the Interior.

LIST OF SPECIAL ACTS

Date of Act and Forest

3-13-08 (35 Stat. 42), Crow Creek National Forest.
2-18-09 (35 Stat. 626; 16 U. S. C. 494), Calaveras Big Trees.
5-17-12 (37 Stat. 108; 16 U. S. C. 494), Calaveras Big Trees.
7-31-12 (37 Stat. 241), State of Michigan.
8-22-12 (37 Stat. 323), Pecos-Zuni.
4-16-14 (38 Stat. 345; 16 U. S. C. 51), Sierra-Stanislaus.
3-3-17 (39 Stat. 1122; 16 U. S. C. 164, 166, 167), National Forests in Montana.
6-5-20 (41 Stat. 986; 16 U. S. C. 675-678), Harney.
3-4-21 (41 Stat. 1366), Rainier.
12-20-21 (42 Stat. 350), Shoshone.
2-2-22 (42 Stat. 362), Deschutes.
9-22-22 (42 Stat. 1018), State of Idaho.
9-22-22 (42 Stat. 1017; 16 U. S. C. 483, 484), All.
9-22-22 (42 Stat. 1036), Wenatchee, Olympic, Snoqualmie.
2-14-23 (42 Stat. 1245), Lincoln. (For regulations see Circ. 888, approved April 9, 1923, 49 L. D. 529.)
6-7-24 (43 Stat. 643), Forests in New Mexico.
1-12-25 (43 Stat. 739), Forests in New Mexico.
2-20-25 (43 Stat. 952), Plumas, Eldorado, Stanislaus, Shasta, Tahoe.
2-28-25 (43 Stat. 1074), Snoqualmie.
2-28-25 (43 Stat. 1079), Mt. Hood.
3-3-25 (43 Stat. 1215; 16 U. S. C. 516), All.
3-3-25 (43 Stat. 1117), Custer.
3-4-25 (43 Stat. 1279), Umatilla, Wallowa, Whitman.
3-4-25 (43 Stat. 1282), Whitman.
4-21-26 (44 Stat. 303), All Forests in New Mexico and Arizona.
5-26-26 (44 Stat. 655; 16 U. S. C. 37-40), Absaroka, Gallatin, Yellowstone Park.
6-15-26 (44 Stat. 746), National Forests in New Mexico.
2-15-27 (44 Stat. 1099; 16 U. S. C. 508a), Black Hills and Harney.
3-2-27 (44 Stat. 1262), State of Oregon.
3-3-27 (44 Stat. 1378), Arapaho.
3-4-27 (44 Stat. 1412), Colville.
3-26-28 (45 Stat. 370), Manti.
4-10-28 (45 Stat. 415), Challis, Sawtooth.
4-16-28 (45 Stat. 431), Carson, Manzano, Santa Fe.
4-23-28 (45 Stat. 450), Crater.
5-17-28 (45 Stat. 598), Missoula.
1-30-29 (45 Stat. 1145), Montana.
2-7-29 (45 Stat. 1154), Lincoln. (For regulations see Circ. approved March 22, 1929, "K" 1327799.)
5-14-30 (Ch. 270, 46 Stat. 278), Fremont.
2-25-32 (47 Stat. 55), Cache.
6-30-32 (47 Stat. 451), Siuslaw.
3-4-33 (47 Stat. 1563), Modoc.
3-4-33 (47 Stat. 1569), Gunnison.
4-30-34 (48 Stat. 649), St. Joe.
6-13-35 (49 Stat. 338), Siskiyou.
6-13-35 (49 Stat 338), Willamette.
6-25-35 (49 Stat. 422; 16 U. S. C., Note 486), Lincoln.
8-2-35 (49 Stat. 508; 16 U. S. C., 485a), Chelan.
6-19-36 (49 Stat. 1534), Umatilla and Whitman.
7-27-37 (50 Stat. 534), Rogue River.
8-12-37 (50 Stat. 622), Columbia.
8-21-37 (50 Stat. 739), Snoqualmie.
2-12-38 (52 Stat. 28), Tahoe.
5-26-38 (52 Stat. 443), Kaniksu.
6-15-38 (52 Stat. 686), Black Hills.
6-22-38 (52 Stat. 835), Modoc, Shasta and Lassen.
6-22-38 (52 Stat. 836), Shasta and Klamath.
6-22-38 (52 Stat. 838), Plumas, Tahoe and Lassen.
8-10-39 (53 Stat. 1347), Kaniksu.
8-11-39 (53 Stat. 1412), Wenatchee.
1-17-40 (54 Stat. 14), Suislaw.
6-8-40 (54 Stat. 251), Ochoco.
6-17-40 (54 Stat. 402), Malheur, Umatillla and Whitman.
6-29-40 (54 Stat. 695), San Juan-Rio Grande.
6-5-42 (56 Stat. 311), Plumas.
12-23-44 (58 Stat. 924), Pike.

[F. R. Doc. 50-3991; Filed, May 10, 1950; 8:45 a. m.]

[3] See the attached table.

Office File

Obsolete
Replaced by 1784
Circ. 1852

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1753]

PART 69—MINERAL LANDS; GENERAL MINING REGULATIONS

AREAS SUBJECT TO SPECIAL LAWS

A new paragraph is added to the footnote to § 69.11, as follows:

Lands segregated for classification or sold under the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679, 48 U. S. C. 364a–364e) are subject to mining location, under the provision of section 3 of that act for the development of the reserved minerals under applicable law, including the United States mining laws, and subject to the rules and regulations of the Secretary of the Interior necessary to provide protection and compensation for damages from mining activities to the surface and improvements thereon. Such mining locations are subject to the applicable general regulations in Parts 69 and 185 and to the additional conditions and requirements in § 75.39 of this chapter.

(R. S. 2478; 43 U. S. C. 1201)

MARION CLAWSON,
Director.

Approved: May 6, 1950.

OSCAR L. CHAPMAN,
Secretary of the Interior.

[F. R. Doc. 50-4024; Filed, May 11, 1950; 8:45 a. m.]

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page 2840

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1754]

PART 75—SALES AND LEASES

SALE OF LANDS AT PUBLIC AUCTION FOR INDUSTRIAL OR COMMERCIAL PURPOSES, INCLUDING HOUSING

AUTHORITY: §§ 75.23 to 75.40 issued under sec. 5, 63 Stat. 679, 48 U. S. C. Sup., 364e.

SALE OF LANDS AT PUBLIC AUCTION FOR INDUSTRIAL OR COMMERCIAL PURPOSES, INCLUDING HOUSING

§ 75.23 *Statutory authority.* The sale, at public auction, of tracts not exceeding 160 acres in the aggregate, which have been classified as suitable for industrial or commercial purposes, including construction of housing, is authorized by the act of August 30, 1949 (63 Stat. 679, 48 U. S. C. 364a–364e). Section 4 provides that the act of May 14, 1898 (48 U. S. C. 371, 462), as amended, creating shore space reserves shall not apply to nor limit the operations of the act.

§ 75.24 *Definitions.* When used in this part:

(a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Regional Administrator" means the Regional Administrator, Region VII, Bureau of Land Management, Anchorage, Alaska.

(d) "Manager" means manager of the land office for the district in which the land is situated.

(e) "Applicant" or "purchaser" includes an individual, partnership, association of individuals, or a corporation, including municipal corporations.

(f) "The act" means the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679, 48 U. S. C. 364a–364e).

§ 75.25 *Policy.* It is the policy of the Secretary to sell public lands under the act only when the lands will be put to some definite industrial or commercial use within reasonable time after purchase according to the utilization program declared by the applicant or purchaser pursuant to § 75.28 or § 75.34 (b).

§ 75.26 *Lands subject to sale; classification and use.* (a) Any public lands in Alaska not within national parks or monuments, national forests, Indian lands, or military reservations, may be sold under the act, provided such lands shall first have been classified by the regional administrator as suitable for disposal for industrial, commercial or housing use. The regional administrator may classify lands under the act either on his own motion or upon application. A properly filed application for the purchase of public lands will be considered as a request for classification of the land as suitable for disposal under the act.

(b) Disposal of withdrawn or reserved lands may be made only with the consent of the department or agency for whose use or in whose interest the lands were reserved or withdrawn, or which has administrative jurisdiction over such lands, and subject to the conditions required by such department or agency.

(c) Lands may be classified for disposal as industrial, commercial or housing sites suitable for one or more types of enterprises, including, but not limited to, the following:

(1) Industrial site for manufacturing, fabricating, processing, or warehouse-storaging.

(2) Commercial site for merchandising, retail and wholesale, including warehouse and distribution centers; fur farms for penned animals; transportation facilities, including terminals, and repair shops.

(3) Housing site for apartments, detached and semi-detached dwellings on a project basis of sufficient size, but not less than five dwelling units, to warrant large-scale development; hotels, recreation resorts, overnight lodges, and motor courts.

(d) The sale of lands under §§ 75.23 to 75.40 will be subject to any valid existing rights; but the act of May 14, 1898 (48 U. S. C. 371, 462), as amended, creating shore space reserves, will not apply to nor limit dispositions under these sections.

§ 75.27 *Application;*[1] *limitation on holdings.* An application may be filed with the manager by any qualified individual, association of individuals or corporation, including municipal and public corporations, to purchase land for industrial, commercial or housing purposes. The application must be executed and filed in duplicate if the land is surveyed, and in triplicate if the land is unsurveyed. Each application shall be for only one tract, reasonably compact in form, containing so much land, not exceeding 160 acres, as is actually required for the contemplated enterprise or project.

An applicant may file any number of applications, but no award may be made nor may patent issue to any purchaser for land which, with other lands under this act then held by such purchaser, shall exceed 160 acres in the aggregate. The application must contain in substance the following information:

(a) Name and address of applicant; age; general nature of his business and principal place of business.

(b) An association is required to file a certified copy of its articles of association and the same showing, including holdings of its members, as required of an individual as specified herein. A corporation is required to file a certified copy of its articles of incorporation and a showing that it is qualified to hold real estate in Alaska.

(c) Description of the land desired, by legal subdivision, section, township and range, if surveyed, and by metes and bounds with the approximate area, if unsurveyed. The metes and bounds description should be connected by course and distance with some corner of the public land surveys, if practicable, or with reference to rivers, creeks, mountains, towns, islands, or other prominent topographical points or natural objects or monuments. No patent may issue, however, until an official survey is made.

(d) A brief but complete statement as to the use to which the land will be put, supplemented by the showings required in § 75.28.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

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(e) A statement of the applicant's interests, direct or indirect, whether as a member of an association or stockholder in a corporation or otherwise, in lands covered by purchase certificates or patents issued under the act, with the acreage thereof, identifying the same by land office and serial or by patent number, and a statement that the total amount of such lands then held by the applicant, together with the lands applied for, do not exceed 160 acres in the aggregate.

(f) The application must be signed by the applicant or an attorney in fact; if executed by an attorney in fact, it must be accompanied by the power of attorney. Application on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto. When a municipal or public corporation is the applicant, the authority of the signing official or officials to act for the corporation must be furnished, evidenced by a certified copy of the resolution of its governing board or body.

§ 75.28 *Land Utilization program; statement and plat.* (a) The application must be accompanied by an additional statement executed by the applicant disclosing in detail the proposed use to which the land will be put, containing in substance the following information: Type (whether industrial, commercial or housing); structures and other improvements to be erected on the land, including size and cost of construction; approximate dates for beginning and completing construction; or, in the case of housing, the number of separate housing units or the number of persons or families for whom accommodations will be provided.

(b) The applicant must also furnish a plat of the area desired for purchase, showing the proposed location of all structures, roadways, and other improvements and facilities to be erected, in sufficient detail to illustrate the contemplated utilization of the tract and the need for all the acreage for which application is made.

§ 75.29 *Effect of application; segregation of land.* (a) Subject to valid prior rights, the filing of an application in conformity with the regulations in this part will segregate the land applied for from application, entry, or settlement under any public land laws or from mining locations except as provided in § 75.39, pending classification of the land under the act.

(b) If the application is not properly executed or is not accompanied by the showings required in § 75.28, the application will be rejected. If the application is regular and the status of the land warrants its consideration for classification under the act, the manager will promptly forward the application to the regional administrator.

(c) Subject to valid prior rights, the regional administrator may, at any time, on his own motion, effect a segregation of land, pending its classification as suitable for disposal under the act by filing with the manager of the land office a notice specifying each tract of land under consideration. The notice shall be effective to segregate the land from further application, entry or settlement under any public land law, or from mining locations except as provided in § 75.39. The segregation notice shall be effective for not more than six months from date of filing of the notice in the land office, but the segregation may be extended for not more than an additional six months by the regional administrator, by filing a similar notice as to any or all of such tracts.

(d) An application or a segregation notice shall not prevent the filing of other applications under any public land law without the initiation of any rights thereunder, pending classification of the land. Upon determination, pursuant to an application or notice, that the land is not suitable for disposal under the act or upon expiration of the segregation period or an extension thereof without classification, the land shall be subject to the public land laws and pending applications thereunder.

§ 75.30 *Classification and appraisal; withdrawn or reserved land.* (a) The regional administrator, based upon such reports and studies as may be neecssary, will make a determination whether the land in the application or segregation notice is suitable for disposal for industrial or commercial purposes; he will also appraise the land at its fair market value.

(b) If the land is withdrawn or reserved on behalf of or is under the administrative jurisdiction of another department or agency, the consent of such department or agency to the disposal of the land must be obtained prior to classification, and such disposal will be subject to any necessary and proper conditions required by the head of the department or agency.

§ 75.31 *Publication of notice; contents; posting.* (a) Upon a favorable classification of the land, the regional administrator will have a notice of the sale published, at the expense of the United States, not less than 30 days prior to the date fixed for the sale, in a designated newspaper of general circulation in Alaska. Publication may be made once a week for four consecutive weeks.

(b) The notice will contain the date, hour and place of the sale; description of the tract or tracts, whether surveyed or unsurveyed; if insurveyed, a statement that the land must be surveyed at the expense of the purchaser prior to patent, with the estimated cost of survey; type or types of use for which classified; the minimum acceptable bid price which shall be not less than the appraised value if the land is surveyed or appraised value plus estimated cost of survey if the land is unsurveyed; a list of all reservations to which the land is subject, including reservation to the United States of all minerals in the land, as well as fissionable source materials under the act of August 1, 1946 (60 Stat. 755; 42 U. S. C. 1805 (b) (7)); and such other reservations, if any, as may be necessary and proper; where and how bids shall be submitted; and a statement warning all bidders against violation of the provisions of 18 U. S. C. 1860 prohibiting unlawful combination or intimidation of bidders.

(c) The manager will post a copy of the notice of sale in the land office during the entire period of publication.

§ 75.32 *Bidding and sale.* (a) The land will be offered for sale at public auction at a minimum price of not less than the appraised value, plus the estimated cost of any surveys required to properly describe the land prior to issuance of patent. Bids may be made by the principal or an agent either personally at the sale or by mail, in the manner specified in the notice of sale. Bids sent by mail will be considered only if received at the land office prior to the hour fixed for the sale. The bids must be enclosed in a sealed envelope and must be accompanied by a certified check, cashier's check, or money order payable to the Treasurer of the United States for one-fifth the amount of the bid. The sealed envelope must be marked in the lower left-hand corner as prescribed in the notice of sale. The sealed envelopes, with the hour and date of receipt in the land office noted thereon, will be opened by the manager only at the time fixed for the sale.

(b) The manager will commence the sale by reading the public announcement thereof and by opening the sealed bids and announcing such bids. He will then receive bids from the persons present.

§ 75.33 *Action at close of bidding; declaration of highest bidder.* (a) When all bids from the persons present shall have been received, the manager will, in the usual manner, declare the bidding closed. He will then announce the amount of the highest bid and require the offeror immediately to deposit one-fifth the amount of the bid. In the absence of such payment the manager will at once proceed with the sale, excluding that bid and starting with the next highest bid not withdrawn. In the event the bids of two or more persons sent by mail are the same in amount and are the highest offered, the manager will then and there hold a public drawing, in the manner specified in 43 CFR 295.8 (b), from among such persons, and the bid of the person whose name is drawn will be accepted by the manager. The remainder of the bid must be paid by the bidder within 30 days after receipt of

from the manager. When the amount of the bid is paid, the manager will declare the offeror as the successful bidder, but no certificate of purchase will be issued unless and until the bidder has made satisfactory compliance with § 75.34.

(b) If the remainder of the bid is not paid within the time allowed or the bidder fails to qualify in accordance with § 75.34, the bid will be rejected and the one-fifth deposit will be forfeited; and the regional administrator may offer the land to the party who made the next highest bid, if such bidder is still interested in the purchase. Until the successful bidder has fully complied with § 75.34, the regional administrator may at any time determine, in the public interest, that the land should not be sold, and the applicant or any bidder shall have no contractual or other rights as against the United States, and no action taken shall create any contractual or other obligation of the United States.

§ 75.34 *Statement of qualification; proposed utilization program.* Before a certificate of purchase may issue, the successful bidder must, within 30 days after he shall have been so declared, file in the land office, if he has not already done so:

(a) A statement and evidence of his qualifications and holdings of lands under this act in conformity with § 75.27 (a) or (b), and (e).

(b) Acceptable showing as to the proposed program of use and development of the land, consistent with the general purpose for which classified, containing in substance the detailed information required by § 75.28.

(c) A statement, accompanied by satisfactory proof, that he has the financial means or has made arrangements with an established financial institution to provide the means to carry the development program to completion; also a statement that the bid is not made for or on behalf of any undisclosed principal or other party in interest.

(d) In addition, the bidder may furnish or he may be required to furnish any additional information or showing, or proof of his bona fide intention and of his financial ability to develop the tract for the contemplated use. Any showing as to financial responsibility will, upon request of the bidder, be treated as confidential and not open to public inspection.

§ 75.35 *Certificate of purchase; rights and limitations; survey.* (a) When the regional administrator is satisfied that the successful bidder is qualified, that he has the intention and financial means to develop and use the land in accordance with the act and his proposed utilization program, the regional administrator will authorize the issuance by the manager of a certificate of purchase on Form 4–1139, containing the reservations as listed in the published notice of sale.

(b) Upon issuance of the certificate which will be valid for a period of three years from the date of issuance, the purchaser shall have the right, during the three-year period, to enter upon, occupy, use, and make improvements upon the land in accordance with the declared utilization program.

(c) If the land is unsurveyed, the manager will, upon issuance of the certificate of purchase, request the regional chief, Division of Cadastral Engineering, to have a survey made and plats prepared. Upon completion of the survey work, the purchaser will be required to pay any deficiency, or he will be refunded any amount paid in excess of the actual cost of survey.

(d) Timber on the land may not be cut or removed without the prior approval of the regional administrator. Approval will be granted for the removal of only so much of the timber and clearance of so much of the land as is directly necessary to the actual improvement and use of the land in accordance with the utilization program.

§ 75.36 *Assignment; mortgage or loan security.* (a) A certificate of purchase may be assigned in its entirety only. The proposed assignment must be filed in duplicate in the land office within 90 days after its date of execution, for the approval of the manager. The instrument must contain all the terms and conditions agreed upon by the parties thereto, including the consideration paid for the assignment, and must be accompanied by the same showing as to the assignee's qualifications, holding of lands under this act, proposed program for utilizing and developing the land, and financial ability to carry out the declared utilization program, as is required of the successful bidder in accordance with § 75.34. An assignment will not be recognized unless approved by the manager; a patent, if issued, will be in the name of the approved assignee. Subleases are not authorized.

(b) A certificate of purchase may be pledged as security for a loan from a lending agency when the loan is made in furtherance of the purchaser's or certificate holder's land utilization program; the lending agency may ascertain from the manager the status of the land and other pertinent information concerning the certificate of purchase. In case the holder-borrower's improvements or his rights under the purchase certificate are lawfully acquired by the lending agency through foreclosure or otherwise, such agency, or any party who purchases the property or rights from such agency, if qualified in accordance with § 75.34, will, upon application, be recognized in lieu of the previous holder or purchaser and, upon compliance with the terms of the certificate of purchase, may apply for the issuance of a patent. If, in making a sale the lending agency takes back a mortgage on the property, the agency shall be entitled to the same consideration as in the case of the original loan. A lending agency which files proper notice with the manager that it has made a loan and accepted, as security therefor, a certificate of purchase or improvements on the land, in conformity with the provisions of this paragraph, will be advised of any action taken affecting the status of the land.

§ 75.37 *Termination of certificate; removal of improvements.* (a) At the end of three years from the date of issuance, unless there is then pending an application for the issuance of a patent filed in accordance with § 75.38, the certificate of purchase will be void and of no further effect, all rights thereunder will terminate; and no moneys paid thereon may be returned. No extension of time for compliance with the terms of the certificate of purchase can be granted.

(b) Thereupon the manager will allow the approved holder of the certificate of purchase 90 days from notice within which to remove from the land any materials, improvements, structures, or other property placed thereon. After the 90-day period or any extension thereof granted by the manager because of adverse climatic conditions or other sufficient cause, all such materials, improvements, structures, and property not removed will become the property of the United States.

§ 75.38 *Application for patent; proof of use.* (a) An application for the issuance of a patent for the land, signed by the approved holder thereof, must be filed in triplicate with the manager, at any time after six months and before the expiration of three years from the date of issuance of the certificate of purchase. An application filed after expiration of the three-year period will be rejected. The application must include a showing as to the nature and cost of the improvements and structures placed on the land showing substantial compliance with the declared land utilization program; and the use, dates, and periods of use of the land which must aggregate not less than six months.

(b) There must be furnished with the application the affidavits of two disinterested persons, based upon their own knowledge, that the land has been used for the purpose for which it was sold for an aggregate period of not less than six months. In addition, the approved holder may submit, if he desires, or he may be required by the manager to submit any other evidence which will constitute satisfactory proof that the land has been utilized for such purpose for the required period.

§ 75.39 *Issuance of patent; reservations; disposal of minerals.* (a) If the proof is satisfactory and the land has been surveyed, the manager will authorize the issuance of the patent in fee, subject to the reservations listed in the certificate of purchase.

(b) Any minerals subject to the leasing laws in the lands sold or patented under the act may be disposed of to any qualified person under applicable laws and regulations in force at the time of such disposal.

(c) Mining claims for minerals subject to the United States mining laws may be located in accordance with the applicable provisions of 43 CFR, Parts 69 and 185, and the additional conditions and requirements of this part notwithstanding the lands have been segregated pursuant to § 75.29 or sold under the act. The locator of any such mining claims must file for record in the proper land office, not later than 90 days after the location is made, a copy of the notice of location of the claim, with the name and address of each owner of the claim and the description of the land claimed.

(d) If the land is surveyed, the copy of the location notice must describe the legal subdivision or subdivisions partly or wholly covered by the mining claim; or the copy may be accompanied by a separate statement of the locator describing the legal subdivisions affected. If the land is unsurveyed, the copy of the location notice should describe the land by metes and bounds connected by course and distance to the nearest corner of the public land surveys, if practicable or with reference to rivers, creeks, mountains, towns, islands or other prominent topographical points or natural objects or monuments; or the copy of the notice may be accompanied by a separate statement of the locator giving the same information. The mining claimant must file within 90 days after the expiration of any annual assessment year, a statement as to the assessment work done or improvements made during the previous assessment year, or as to compliance, in lieu thereof, with any applicable relief act.

(e) Such location duly made will carry all the rights and incidents of mining locations, except that they will give to the locator no title, possessory or otherwise, to the surface or surface resources other than the right to occupy and use so much thereof as is reasonably required for carrying on mining or prospecting, subject to the general regulations of the Secretary of the Interior, and the provisions contained in 43 CFR, Parts 69 and 185. An application for the issuance of a mineral patent should be noted "Mining claim on land sold under the act of August 30, 1949 (63 Stat. 679, 48 U. S. C. 364a–364e)." A mineral patent for a mining claim on land so segregated or sold under this act will convey title only to the mineral deposits within the claim and will carry a reference to the act of August 30, 1949.

(f) Any party who obtains the right, whether by license, permit, lease or location, to prospect for, mine, or remove the minerals after the land shall have been segregated or disposed of under the act, will be required to compensate the holder of the surface rights for any damages that may be caused to the value of the land and to the tangible improvements thereon by such mining operations or prospecting, and may be required by the regional administrator as to mining claims, or by the terms of the mineral license, permit or lease, to post a surety bond not to exceed $5,000 in amount to protect the surface owner against such damage, prior to the commencement of mining operations.

See Aug. 1890

§ 75.40 *Appeals.* An appeal pursuant to the rules of practice (43 CFR, Part 221) may be taken from the decision of any subordinate officer of the Bureau of Land Management to the Director, and from the Director's decision to the Secretary.

NOTE: The reporting requirement of this regulation has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

MARION CLAWSON,
Director.

Approved: May 6, 1950.

OSCAR L. CHAPMAN,
Secretary of the Interior.

[F. R. Doc. 50–4025; Filed, May 11, 1950; 8:45 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular No. 1755]

PART 64—HOMESITES OR HEADQUARTERS

PURCHASE OF TRACTS NOT EXCEEDING 5 ACRES

In order to show the procedure in connection with the recording in the land offices of notices of the initiation of claims as sites for headquarters and as homesites in Alaska, pursuant to the act of April 29, 1950 (Public Law 493—81st Cong.), the following new sections are added to Part 64:

PURCHASE OF TRACTS NOT EXCEEDING 5 ACRES ON SHOWING AS TO EMPLOYMENT OR BUSINESS

§ 64.2a *Notice of initiation of claim.* A notice of the initiation of a claim under the act of March 3, 1927, must designate the kind of trade, manufacture, or other productive industry in connection with which the claim is maintained or desired, and identify its ownership. The procedure as to notices will be governed in other respects by the provisions of §§ 64.6a to 64.6e.

§ 64.4a *Time for filing application.* Application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

PURCHASE OF TRACTS NOT EXCEEDING 5 ACRES WITHOUT SHOWING AS TO EMPLOYMENT OR BUSINESS

§ 64.6a *Notice of initiation of claim.* Any qualified person, association, or corporation initiating a claim on or after April 29, 1950, under the act of May 26, 1934, must file notice of the claim for recordation in the land office for the district in which the land is situated, within 90 days after such initiation. Where on April 29, 1950, such a claim was held by a qualified person, such person must file notice of the claim in the proper land office within 90 days from that date.

§ 64.6b *Form of notice.* The notice must be filed on Form 4–1154, in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain: (a) The name and address of the claimant, (b) age and citizenship, (c) date of settlement and occupancy, and (d) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

§ 64.6c *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in § 64.6a, no credit shall be given for occupancy of the site prior to filing of notice in the proper land office, or application to purchase, whichever is earlier.

§ 64.6d *Recordation of notice.* Upon receipt of notice of a claim under this part, if satisfactory in form, the manager will advise the claimant of its receipt and the current serial number assigned thereto. If the notice is found unsatisfactory for proper recording, the manager, before assigning the serial number, or recording, will call upon the claimant to cure the defects by filing a new or supplemental notice. If the application is for land, which is not subject to the form of disposition specified in the notice, the applicant will be advised that the filing of the notice has not conferred on him any right to the land.

§ 64.6e *Recording fee.* The notice of the claim must be accompanied by a remittance of $10.00, which will be applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the land office for recording because the land is not subject to the form of disposition specified in the notice.

§ 64.7b *Time for filing application.* Except as provided in § 64.7a, application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(Sec. 10, 30 Stat. 413, as amended; Pub. Law 493, 81st Cong.; 48 U. S. C. 461)

MARION CLAWSON,
Director.

Approved: June 1, 1950.

OSCAR L. CHAPMAN,
Secretary of the Interior.

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular No. 1756]

PART 65—HOMESTEADS

MISCELLANEOUS AMENDMENTS

In order to show the procedure in connection with the recording in the land offices of notices of the initiation of homestead settlement claims in Alaska, pursuant to the act of April 29, 1950 (Public Law 493—81st Congress), Part 65 is amended as follows:

1. Section 65.3 is amended to read:

§ 65.3 *Notice of settlement.* (a) A person making settlement on or after April 29, 1950 on unsurveyed land, in order to protect his rights, must file a notice of the settlement for recordation in the land office for the district in which the land is situated, and post a copy thereof on the land, within 90 days after the settlement. Where settlement is made on surveyed lands, the settler, in order to protect his rights, must file a notice of the settlement for recordation, or application to make homestead entry, in the land office for the district in which the land is located within 90 days after settlement.

(b) Any person maintaining a settlement claim on April 29, 1950, on surveyed or unsurveyed public land, shall file notice of the initiation of the claim in the land office for the district in which the land is situated, (1) within 90 days from that date, if the notice of location had not theretofore been filed in the recording district, or (2) within two years from April 29, 1950, if notice of the location had theretofore been filed in the recording district.

2. The following new sections are added:

§ 65.3a *Form of notice.* The notice must be filed on Form 4–1154, in triplicate if the land is unsurveyed, or in duplicate if surveyed and shall contain: (a) The name and address of the settler, (b) age and citizenship; (c) date of settlement, and (d) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

§ 65.3b *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in § 65.3, no credit shall be given for residence and cultivation had prior to the filing of notice, petition for free survey, or application to make entry, whichever is earliest.

§ 65.3c *Recordation of notice.* Upon receipt of notice of a settlement claim, if satisfactory in form, the manager will advise the claimant of its receipt and the current serial number assigned thereto. If the notice is found unsatisfactory for proper recording, the manager, before assigning the serial number, or recording, will call upon the claimant to cure the defects by filing a new or supplemental notice. If the application is for land which is not subject to the form of disposition specified in the notice, the applicant will be advised that the filing of the notice has not conferred on him any right to the land.

§ 65.3d *Recordation fee.* The notice of settlement claim must be accompanied by a remittance of $10.00, which will be applied as a service charge for recording the notice and will not be returnable, except in cases where the notice is not acceptable to the land office for recording because the land is not subject to homestead settlement.

3. Section 65.4 is amended to read:

§ 65.4 *Marking corners of claim on unsurveyed lands; rights acquired by settlement on surveyed lands.* (a) A settler on unsurveyed land is required to mark the claim by permanent monuments at each corner, in order to establish the boundaries thereof.

(b) Settlement on any part of a surveyed quarter-section subject to homestead entry gives the right to enter all of the quarter section; but if a settler desires to initiate a claim to surveyed tracts which form part of more than one technical quarter-section, he should define the claim by placing some improvements on each of the smallest subdivisions claimed.

4. Paragraphs (a), (b), and (c) of § 65.20 are amended to read:

§ 65.20 *Survey without expense to settler.* (a) The land included in a settlement claim may be surveyed without expense to the settler, provided he has sufficiently complied with the law in the matter of residence, cultivation and improvements to submit 3-year proof. A petition for a free survey may be filed whenever such requirements have been met before notice of the settlement claim is required to be filed, or at any time within 5 years after such notice has been filed.

(b) Petition for survey should be filed in triplicate and should describe the land settled upon by metes and bounds with relation to some natural or permanent monument, and give the approximate latitude and longitude and otherwise with as much certainty as possible without actual survey. Reference should be made to the serial number of the notice of settlement previously filed. If there has been any material deviation made in the description of land claimed, a full explanation must be given of the reason for such deviation. The petition should show the date when the settlement was made, the dates from which and to which the settler has resided upon the land, the number of acres cultivated each year and the results of the cultivation, and the character and value of the improvements on the land. The petition should also show that the land does not extend more than 160 rods along the shore of any navigable water or that the restriction as to length of claim has been waived and that at the date of the initiation of the claim the land was not within a distance of 80 rods along any such water from any homesite or headquarters authorized by the acts of March 3, 1927, and May 26, 1934 (44 Stat. 1364; 48 Stat. 809; 48 U. S. C. 461), or from any location theretofore made with soldiers' additional rights or trade and manufacturing site, homestead, Indian or Eskimo allotment, or school indemnity selection. This showing, however, is not required where a petition for restoration, based on an equitable claim is filed with the application, or the land has been restored from the reservation. The petition must be signed by the applicant and should be corroborated by the statements of two persons having knowledge of the facts.

(c) Upon receipt of the petition, the manager will assign thereto the same serial number that was assigned to the notice of settlement, if one was previously filed; if not, he will assign a current serial number to the petition and will transmit the duplicate to the regional adminstrator. If the manager finds the showing satisfactory and no shore-space question is involved, he will, in the absence of other objection, send the triplicate copy of the petition to the Regional Chief, Division of Cadastral Engineering, Survey Office, Juneau, Alaska, who, not later than the next succeeding surveying season, will issue instruction for survey of the land without expense to the applicant. The original copy of the petition will be retained by the manager for filing with the case record.

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(R. S. 2478, sec. 1, 30 Stat. 409, as amended, Pub. Law 493, 81st Cong.; 43 U. S. C. 1201, 48 U. S. C. 371)

MARION CLAWSON,
Director.

Approved: June 1, 1950.

OSCAR L. CHAPMAN,
Secretary of the Interior.

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular No. 1757]

PART 81—TRADE AND MANUFACTURING SITES

SALE OF PUBLIC LANDS FOR TRADE AND MANUFACTURING SITES

In order to show the procedure in connection with the recording in the land offices of notices of the initiation of trade and manufacturing-site claims in Alaska, pursuant to the act of April 29, 1950 (Public Law 493—81st Cong.), the following new sections are added to Part 81:

§ 81.1a *Notice of initiation of claim.* Any qualified person, association, or corporation initiating a claim on or after April 29, 1950, under section 10 of the act of May 14, 1898, by the occupation of vacant and unreserved public land in Alaska for the purposes of trade, manufacture, or other productive industry, must file notice of the claim for recordation in the land office for the district in which the land is situated, within 90 days after such initiation. Where on April 29, 1950, such a claim was held by a qualified person, association, or corporation, the claimant must file notice of the claim in the proper land office, within 90 days from that date.

§ 81.1b *Form of notice.* The notice must be filed on Form 4-1154, in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain: (a) The name and address of the claimant, (b) age and citizenship, (c) date of occupancy, and (d) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude. The notice must designate the kind of trade, manufacture, or other productive industry in connection with which the site is maintained or desired.

§ 81.1c *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in § 81.1a, no credit shall be given for occupancy of the site prior to filing of notice in the proper land office, or application to purchase, whichever is earlier.

§ 81.1d *Recordation of notice.* Upon receipt of notice of a claim under this part, if satisfactory in form, the manager will advise the claimant of its receipt and the current serial number assigned thereto. If the notice is found unsatisfactory for proper recording, the manager, before assigning the serial number, or recording, will call upon the claimant to cure the defects by filing a new or supplemental notice. If the application is for land which is not subject to the form of disposition specified in the notice, the applicant will be advised that the filing of the notice has not conferred on him any right to the land.

§ 81.1e *Recording fee.* The notice of the claim must be accompanied by a remittance of $10.00, which will be earned and applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the land office for recording, because the land is not subject to the form of disposition specified in the notice.

§ 81.2a *Time for filing application.* Application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(R. S. 2478, Pub. Law 493, 81st Cong.; 43 U. S. C. 1201)

MARION CLAWSON,
Director.

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OSCAR L. CHAPMAN,
Secretary of the Interior.

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See Circ. 1770, 1860, 1824. See 1862

Replaced by Circular 1921 (11/58)

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1758]

PART 259—DISPOSAL OF MATERIALS

Part 259 is revised to read as follows:

AUTHORITY: §§ 259.1 to 259.27 issued under sec. 1, 61 Stat. 681; 43 U. S. C. Sup., 1185.

§ 259.1 *Statutory authority.* (a) The act of July 31, 1947 (61 Stat. 681; 43 U. S. C. 1185), authorizes the disposal of materials, including but not limited to sand, stone, gravel, yucca, manzanita, mesquite, cactus, common clay, and timber or other forest products, on public lands of the United States, if the disposal is not otherwise expressly authorized by laws of the United States, including the United States mining laws, and is not expressly prohibited by laws of the United States, nor detrimental to the public interest.

(b) The provisions of this act do not apply to lands in any national forest, national park or national monument or to any Indian lands, or lands set aside or held for the use or benefit of Indians, including lands over which jurisdiction has been transferred to the Department of the Interior by Executive order for the use of Indians.

See Circ. 1770

(c) Except as to the land specified in paragraph (b) of this section, the disposal may be made of materials on lands withdrawn in aid of a function of a Federal department or agency other than the Department of the Interior, or a State, territory, county, municipality, water district, or other local Government subdivision or agency, with the consent of said Federal department or agency, or of such State, Territory, or local governmental unit.

§ 259.2 *Definitions.* (a) "Regional administrator" means the regional administrator, Bureau of Land Management.

(b) "Signing officer" means the Government official who has been duly authorized to sign the contract for the disposal of materials or to issue a permit under the act and to take action under such contract or permit.

(c) "Officer in charge" means such officer as may be designated by the signing officer or other authorized Government official to supervise operations under such contract or permit.

(d) "The act" means the act of July 31, 1947 (61 Stat. 681; 43 U. S. C. 1185).

See Circ. 1824

Circ. 1770

§ 259.3 *Disposals which must be made under other statutes; rights under other statutes.* (a) The disposal of materials will be made under other acts where there is any such statutory authority. Dead or down timber, or timber which has been seriously or permanently damaged by forest fires, shall not be disposed of under the act but rather under the act of March 4, 1913 (37 Stat. 1015; 16 U. S. C. 614, 615), as amended, and the regulations thereunder (43 CFR, Part 284). However, where such dead, down, or damaged timber is intermingled with timber which is live, standing, and of merchantable size and character, and it is not feasible to sell the two classes of timber separately, consideration will be given to the disposal of both classes in a single transaction under the act and the regulations in this part.

(b) The disposal of timber in Alaska, where statutory authority under other acts exists, will be made under such statutes and the applicable regulations (43 CFR, Part 79). Sales of more than a two years' supply of timber for domestic use in Alaska may be authorized under the act. Timber on the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands will be disposed of under the applicable act and regulations (43 CFR, Part 115).

(c) The limitations on free-use privileges under the act because of the existence of other statutory authority for the free use of timber are set out in § 259.21.

(d) Sand, stone, and gravel of such quality and quantity as to be subject to the mining laws, will not be disposed of under the act.

(e) Where there are valid, existing claims to the land by reason of settlement, entry, or similar rights obtained under the public land laws, no disposal of the materials on the land may be made under the act. If the disposal of materials is consistent with such interest in the land, as in the case of lawful grazing or mining use, the materials may be disposed of under the act under such conditions as the signing officer, in his discretion, may specify.

(f) A free use permittee or the purchaser of materials shall have a prior right to the materials as against any subsequent claimant or entry of the lands affected.

(g) The proceeds derived from such sales shall be deposited in the Treasury of the United States and shall be disposed of in the same manner as monies received from the sale of public lands.

SALES

§ 259.4 *Sale and appraisal.* (a) All materials to be sold under the provisions of the act shall be appraised and in no case shall they be sold at less than the appraised price. They shall be sold to a responsible qualified purchaser under the appropriate form of contract and upon such additional terms as the signing officer considers advisable.

(b) Where the appraised value of the materials is $1,000 or less, it may be sold to a responsible qualified applicant or to the highest qualified bidder at public auction or under sealed bids. Sale without competitive bidding may be made in the discretion of the signing officer where he determines it is unlikely a competitive interest exists. Not more than $1,000 worth of materials may be sold non-competitively to any one applicant in any period of twelve consecutive months. However, this limitation shall not be applicable to sales of $1,000 or less of salvage timber or of small isolated tracts of mature or over-mature timber when, in the judgment of the signing officer, such sale is in the public interest.

(c) If the appraised value exceeds $1,000, however, a sale may be authorized only to the highest responsible qualified bidder at public auction or under sealed bids.

(d) Offerings of material for sale may be made without the receipt of applications, when such action is in the public interest.

See Circ. 1770

§ 259.5 *Who may apply.* An applicant may be (a) an individual, (b) a partnership, (c) an unincorporated as-

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sociation, or (d) a corporation organized under the laws of the United States or of a State or Territory thereof and authorized to transact business in the State or Territory in which the lands are situated.

§ 259.6 *Application; contents.* (a) An application to purchase hereunder may be filed in any office of the Bureau of Land Management. The application should be made on Form 4–059 and contain the following data:

(1) The full name and address of the applicant.

(2) If for a noncompetitive sale, the contract numbers of all noncompetitive contracts entered into by the applicant with the Government under this act during the twelve-month period preceding the filing of the application.

(3) A description of the lands, if surveyed, according to legal subdivision; if the lands are unsurveyed, they must be sufficiently described to permit their identification and the approximate acreage of the lands described.

(4) A detailed statement as to the nature and estimated quantity of each species or kind of material desired, the purpose for which it is desired, its estimated unit and total value, and when the taking could be commenced and completed.

§ 259.7 *Publication and posting.* (a) In any proposed sale for more than $1,000 notice must be published prior to the date of sale at the expense of the Government in a newspaper published in the county in which the materials are located. If the materials are in two or more counties, notice may be published in any one of the counties. If no newspaper is published in such county, then publication shall be made in a newspaper of general circulation in the county. The notice must be published on the same day weekly for four consecutive weeks.

(b) The notice of sale shall set forth the name and postoffice address of the applicant, if any, the description of the land, the nature, quantities and location of the materials to be sold, the appraised price thereof, the minimum bond and minimum installment payments which will be required, the scale or measurement unit upon which the sale will be based, the minimum deposit acceptable, the method of bidding, the place where full information relating to the sale and a copy of these regulations may be obtained, and, where applicable, the slash disposal requirements and forest practices prescribed for the sale. The notice shall also specify the time for the close of receipt of sealed bids which also shall be the time for the opening thereof; or, if the material is to be disposed of by auction, the notice shall set the time and place for the auction. It shall also state that bids of a sum less than the appraised price of the materials will not be considered and that the right to reject any or all bids is reserved. The notice shall also state that if the high bid is rejected for proper cause, or if the contract is not executed by the highest bidder, the contract may be awarded to the next highest qualified bidder and that deposits made with the bids will be returned to the unsuccessful bidders after award of the contract. In all timber sales from public lands within the O. and C. land grant limits in Oregon, the notice shall state that the timber shall be given primary manufacture within a designated marketing area. All bidders are warned against violation of the provisions of 18 U. S. C. 1860, prohibiting unlawful combination or intimidation of bidders.

(c) Any of the requirements specified in paragraph (b) of this section may be omitted from the notice of sale to be published in a newspaper, provided that such notice contains at least the information required to be set forth in Form 4–060.

(d) In any proposed non-competitive sale for $1,000 or less, the signing officer may require notice of sale to be posted in such place and for such period as he may prescribe. The signing officer may require additional notice, including publication in a newspaper at least once but not more than four times. Where the signing officer determines that a competitive sale of such material shall be ordered, publication shall be made in a newspaper at least once but not more than four times.

(e) A copy of any notice of sale under this section shall be posted throughout the entire period of publication in a conspicuous place in the office in which the bids are to be filed or oral auction held.

§ 259.8 *Deposits with bids.* A minimum deposit of at least ten percent of the appraised value of the materials to be sold must accompany each bid. However, the signing officer, in his discretion, may require a deposit in excess of the ten percent minimum. Each deposit must be made by money order, cashier's check or certified check, drawn payable to the Treasurer of the United States, except that a bid may be accompanied by a corporate surety bid bond (Form 4–061) in the amount of the required deposit, conditioned upon execution by the bidder, if the contract is awarded to him, of the required contract with the Government within 30 days after the copies of the contract are transmitted to him for execution in accordance with § 259.10 (a). Deposits with bids are required as a guarantee of good faith, and when payment in full is not made in advance the deposit of the successful bidder will be retained until the contract is completed. The deposit will then be returned, provided the purchaser has faithfully performed the terms of the contract. If a bond is furnished and accepted, the deposit will then be credited toward the initial payment under the contract. Deposits made with bids will be returned to the unsuccessful bidders after award of the contract.

§ 259.9 *Action on bids; qualifications of bidders.* (a) If no bid is received within the time specified in the notice of sale for the receipt of bids, the signing officer, in his discretion, if he determines that no significant rise has occurred in the market price of the materials over the appraised price, may keep open the period for the receipt of bids for all or any part of an additional 90-day period and may sell the materials without readvertising in the following manner:

(1) If, during the extended period for the receipt of bids, a written or oral offer is made for the materials at not less than the advertised minimum appraised price, such offer shall be posted in the office of the signing officer for a period of not less than 5 days from receipt thereof. If no other offers are received during the five-day posting period, the contract may be awarded to the sole bidder, if qualified.

(2) If, however, during such posting period, other offers are received, then all bidders at the end of the original posting period of five days shall be required to participate in oral competitive bidding at a time and place to be designated by the signing officer, and the contract will be awarded to the highest qualified bidder.

(b) In any sale of materials, if not paid for in full in advance, the signing officer may, in his discretion, and before award of the contract, require a financial statement or other information concerning the ability of the applicant or bidder to perform the contract, as well as data covering plant, equipment, etc.

(c) Based upon evidence of the highest bidder's ability to fulfill the terms of the contract, the signing officer, in his discretion, may require payments larger than the minimum installments specified in § 259.12 and in the notice of sale, or he may reject the highest bid and award the contract to the next highest qualified bidder. Nothing herein shall be construed as limiting the right to reject any or all bids in the interest of the Government.

(d) In addition to the foregoing, if the successful bidder is (1) a partnership or an association it may be required to file a certified copy of whatever written articles of partnership or association its members may have executed; (2) a corporation, it may be required to file a certified copy of its articles of incorporation. If not organized under the laws of the State or Territory embracing the lands affected, such corporation shall file a certificate by the proper officer of the State or Territory in which the lands are situated showing the corporation's authority to do business in such State or Territory.

§ 259.10 *Contracts.* (a) The Bureau of Land Management shall prepare contracts on Form 4–054 for sales of over $1,000 and on Form 4–058 for sales of $1,000 or less. Three copies of the contract shall be transmitted to the successful bidder with notice that he will be allowed 30 days in which to sign and return the contracts.

(b) If the successful bidder fails to sign and return the contract and furnish a satisfactory bond within 30 days, or if he otherwise fails to comply with the applicable regulations, that part of his deposit representing the minimum deposit required by the notice of sale, shall be retained as liquidated damages and disposed of as other receipts under the act. In such case the contract may be awarded to the next highest qualified bidder without readvertisement.

§ 259.11 *Bond.* In all sales in which payment in full is not made in advance, a bond of not less than 15 percent of the contract price must be furnished by the purchaser. In any sale the signing officer, in his discretion, may require a bond in excess of that amount. Bonds hereunder shall be executed on Form 4-057. The bond must be that of a corporate surety shown on an approved list issued by the Treasury Department, or a cash bond. United States bonds, or cash, may be furnished in lieu of a surety bond, if accompanied by a proper personal bond and power of attorney authorizing the Secretary, in case of default, to collect, sell, assign, or transfer the said bonds without notice, at public or private sale, free from any equity of redemption, and without appraisement or valuation.

§ 259.12 *Payment.* (a) No part of the material sold under the contract may be severed, extracted, or removed unless advance payment has been made as hereinafter provided.

(b) In all sales in which the determination of the total amount due can be made only after severance or extraction has been completed, the total advance payments required to be made must be sufficient to cover the estimated quantity of the materials sold under the contract. Each such payment shall be held in suspense until the quantity of materials covered thereby has been determined. If thereafter it be determined that the last advance payment under the contract is in excess of the value of the materials, such excess shall be returned to the purchaser.

(c) In any sale of $1,000 or less the signing officer, in his discretion, may require payment in full at the time of execution of the contract or may permit payment in advance of severance or extraction to be made in not to exceed five approximately equal installments.

(d) In sales of more than $1,000 and not in excess of $100,000, the signing officer may require full payment in advance, or may permit payment in advance of severance or extraction in not to exceed ten approximately equal installments.

(e) In any sale of over $100,000, the methods and conditions of payment shall be determined at the time such sale is authorized provided that the amount of the installments so fixed shall be not less than $10,000 each.

(f) In any sale of materials for which payment in installments is permitted, the purchaser shall make an initial payment equivalent to two installments as follows: One installment prior to the approval of the contract and the second installment within six months thereafter, or prior to the commencement of operations thereunder, whichever is earlier.

(g) The first installment shall be retained by the Government as additional security for the full and faithful performance of the contract, and shall be applied in whole or in part toward the final installment thereunder. On the basis of his initial payment, the purchaser may sever or extract materials under the contract of a value not to exceed one-half of such initial payment. Remaining installments shall become due and payable without prior notice whenever the value of the materials severed or extracted under the contract shall equal the sum of the payments made by the purchaser (exclusive of one-half of the initial payment as herein provided).

(h) All payments hereunder shall be made by money order, cashier's check or certified check drawn payable to the Treasurer of the United States.

§ 259.13 *Passage of title; risk of loss.* The title to the material covered by the contract will pass to the purchaser only upon payment for, and severance or extraction of, the material. The purchaser shall assume complete risk of loss for all materials, the title to which has passed. If material covered by the contract, title to which has not passed, is damaged or destroyed by fire or otherwise, the purchaser shall be liable for all loss suffered if the purchaser, his contractors or subcontractors, or the employees of any of them, are directly or indirectly responsible for the damage. If such material is damaged or destroyed without fault on their part, the purchaser shall be liable for the loss sustained to the extent that it is caused by his failure to sever, extract or remove the damaged material as expeditiously as possible under the existing circumstances and the terms of the contract.

§ 259.14 *Reappraisals.* (a) No reappraisals of materials sold under the contract will be made during the life of the contract if the term of the contract is for two years or less. If the term is for more than two years, prior to the commencement of the third and each subsequent year, the material sold under the contract, but not yet severed or extracted, shall be reappraised by the Government in accordance with standard appraisal techiques. Upon reappraisal, the contract unit price of any material severed or extracted during the new contract year shall be the same percentage of the new appraised price as the original contract price was of the original appraised price.

(b) Notice of the adjusted prices to be fixed under the contract shall be sent registered mail by the signing officer to the purchaser at least thirty days before the beginning of the contract year. Not later than thirty days after the receipt of notice, the purchaser may submit his objections, if any, in writing to the signing officer. In the absence of such objection, or if the signing officer does not find the objections sufficient and so advises the purchaser, or, subject to the final determination of an appeal, if taken, from the decision of reappraisal of the materials, the new prices shall be in effect and shall govern the payments to be made for all materials severed or extracted during the new contract year.

§ 259.15 *Assignments.* The purchaser may assign the contract or any interest therein only with the consent of the signing officer. The proposed assignment shall be forwarded to the signing officer in triplicate within thirty days from the date of its execution. Except as hereinafter provided, the assignment shall contain all the terms and conditions agreed upon by the parties thereto, the assignee's agreement to be bound by the terms of the contract, and shall be accompanied by a proper bond if one has been required under the contract, or the agreement of the surety to remain bound after the approval of the assignment, or, if no bond has been required under the contract, by an agreement to furnish and maintain a proper bond, if required. An assignment to a lending agency as security for a loan may provide that the assignee shall receive merely the purchaser's title to the contract without assuming any liability thereunder, and that the assignor shall remain bound to perform under the contract. In such case, before approval of the assignment, the assignor must submit the written consent of his surety to remain bound under the terms of the contract. Nothing herein shall limit or restrict the right of the Government to suspend operations under, or terminate or cancel, the contract in accordance with §§ 259.16 and 259.19.

§ 259.16 *Termination of contract.* The signing officer may terminate a contract at the request of the purchaser upon satisfactory showing that the termination will not adversely affect the public interest, and that all charges due the Government thereunder have been paid.

§ 259.17 *Extension of time.* The signing officer, in his discretion, upon written request by the purchaser, not less than 90 days nor more than 150 days before expiration of the contract, may grant an extension of time within which to complete the contract if the purchaser shows that his delay in performance is due to circumstances beyond his control and that the extension will not prejudice the Government's interest. No extension may be granted, except in contracts for one year, without reappraisal of the materials remaining to be taken under the contract. Such reappraisals shall be made in accordance with the provisions of § 259.14, except that, in granting an extension of any contract whose original term was 2 years or more, the adjusted price of the materials to be severed or extracted during the extended term shall not be less than the contract price prevailing at the end of the original contract term.

§ 259.18 *Removal of personal property upon termination of contract.* (a) Upon termination of a contract the purchaser shall have the right at any time within one year thereafter to remove his equipment, improvements, or other personal property from the Government land, provided all charges due the United States under the contract have been paid. The signing officer, in his discretion, may grant the purchaser's request for an extension of time for removal. Any improvements, equipment, or personal property remaining on the Government land at the end of such period shall become the property of the United States.

(b) Improvements necessary for the severance, extraction or removal of other government-owned materials may be left on the Government land for such period and under such terms as may be prescribed by the signing officer.

§ 259.19 *Default, suspension, cancellation, damages and expenses, incurred by Government chargeable to purchaser.* (a) If any of the requirements of the contract are disregarded, the officer in charge, after giving oral or written notice, may suspend the purchaser's operations until there is satisfactory compliance therewith.

(b) If, after notice has been given, the purchaser fails to comply with all of the provisions of the contract, the signing officer shall serve the purchaser with written notice requiring performance thereof within 30 days under penalty of cancellation of the contract and forfeiture of the bond and all monies paid. If the purchaser continues in default after the 30 days, the signing officer may cancel the contract.

(c) The purchaser shall be liable for damage resulting from the breach of contract, including depreciation in the value of the remaining material based upon a determination by the signing officer, and for any expense incurred by the Government by reason of the continued default.

§ 259.20 *Duration of contract.* The maximum periods which shall be allowed after the date of the contract, for the severance or extraction of the materials purchased, except as the contract may be extended in accordance with § 259.17, shall be as follows: For sales of $1,000 or less, one year; for sales of over $1,000 but not exceeding $10,000, two years; for sales over $10,000 but not exceeding $100,000, five years; and for sales exceeding $100,000, such term as shall be fixed in the notice of sale by the signing officer, except that in any contract for the sale of timber from an intermediate cutting the term of such contract may be fixed by the signing officer in his discretion in the notice of sale.

FREE USE

§ 259.21 *Free-use privilege; limitations.* (a) Any Federal, State, or territorial agency, unit, or subdivision, including municipalities, or any person, or any association or corporation not organized for profit, may be permitted to take and remove, without charge, materials subject to the act, for use other than for commercial or industrial purposes or resale. The permittee is granted a right to remove material while the permit remains in force, and in accordance with the provisions of the permit, as against a subsequent applicant who may wish to obtain the same material by purchase; but materials may not be removed by a permittee after the land has been included in a valid existing claim, except as set forth in § 259.3 (e) and paragraph (d) of this section.

(b) Authority under other acts also exists for the free use of timber, under specified circumstances, (1) in certain states by settlers on public lands, citizens and bona fide residents of the State, and corporations doing business in the State (43 CFR, Part 284, and (2) in Alaska by actual settlers, residents, individual miners, prospectors for minerals, churches, hospitals, and charitable institutions (43 CFR, Part 79). Free-use timber applications may be considered under the act, rather than under the statutes and regulations mentioned, only when the applicants cannot qualify under such statutes and regulations, as in the case of any Federal, State, or territorial agency, unit, or subdivision, including municipalities, and Alaskan non-profit associations and corporations which are not engaged in church, hospital, or charitable activities.

(c) The material applied for must be for the applicant's own use and only one free-use permit may be issued to any applicant in any calendar year. No green trees of saw-timber size will be disposed of under free-use permit in the States unless it is in the interest of the Government. Disposal of trees of saw-timber size in Alaska is permitted. A free-use permit may be granted for timber of a stumpage value not in excess of $25, or for other materials subject to disposal under the act of an in-place value not in excess of $25 in any calendar year. However, if it is in the interest of the Government to dispose of timber or other materials applied for under the act, a permit may be granted for materials not in excess of $200 in value. The material removed may not be bartered or sold.

(d) A free-use permit may be issued to any Federal, State or Territorial agency, unit or subdivision, including municipalities, without limitation as to the number of permits or as to the value of the materials to be severed, extracted, or removed, provided the applicant makes a satisfactory showing to the regional administrator that such materials will be used for a public project. Such permits will constitute a superior right to any subsequent entry or claim.

(e) Free-use permits shall not be issued where the applicant owns or controls an adequate supply of the material to meet his needs.

(f) All materials disposed of under free use shall be severed, extracted, or removed in accordance with approved forestry and conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed and other values of the land and resources. In the free-use disposal of timber and other vegetative materials cutting and removal shall be accomplished in such manner as to leave the stand in condition for continuous production.

§ 259.22 *Application for permit.* An application for permit, in duplicate, must be made on Form 4–056 and filed in any office or with any employee of the Bureau of Land Management authorized to issue such permit.

§ 259.23 *Issuance and cancellation of permit; removal of materials; bond.* (a) A permit may be issued and shall incorporate the provisions, if any, governing the selection, removal, and use of the materials. One copy of Form 4–056 shall be returned to the applicant showing the approval or rejection of such application.

(b) The signing officer may cancel a permit if the permittee fails to observe its terms and conditions, or the regulations, or if the permit has been issued erroneously.

(c) No materials shall be removed until the permit is issued. A bond satisfactory to the signing officer may be required as a guarantee of faithful performance of the provisions of the permit and applicable regulations.

§ 259.24 *Removal by agent.* A free-use permittee may procure the materials by agent. Such agent shall not, however, be paid more than fair compensation for the time, labor, and money expended in procuring the material and processing it, and, no charge shall be made for the material itself. No part of the material may be used in payment for services in obtaining or processing it.

§ 259.25 *Termination of permit; extensions; notice of completion of removal operations.* Permits shall be granted for periods not to exceed one year and shall terminate on the expiration dates shown therein unless extended by the signing officer. An extension not to exceed one year may be granted by the signing officer. However, the regional administrator may grant permits to any Federal, State, or Territorial agency, unit or subdivision, including municipalities, for such periods as he may deem appropriate. The permittee must notify the officer in charge upon completion of removal.

GENERAL

§ 259.26 *Trespass; penalty for unauthorized removal of material.* The severance, extraction, or removal of materials from public land under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department is an act of trespass. Trespassers will be liable in damages to the United States, and will be subject to criminal prosecution for such unlawful acts.

§ 259.27 *Appeals.* A party aggrieved by any official action regarding his application, contract, or permit, may appeal from the decision of any subordinate official to the Director of the Bureau of Land Management, and from the Director's decision to the Secretary of the Interior pursuant to the rules of practice (43 CFR, Part 221).

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in acordance with the Federal Reports Act of 1942.

ROSCOE E. BELL,
Associate Director.

Approved: June 20, 1950.

MASTIN G. WHITE,
Acting Assistant Secretary of the Interior.

[F. R. Doc. 50–5435; Filed, June 23, 1950; 8:45 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1759]

PART 115—REVESTED OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY WAGON ROAD GRANT LANDS IN OREGON

GRAZING LEASES OF THE REVESTED AND RECONVEYED LANDS AND INTERMINGLED PUBLIC DOMAIN LANDS

Sections 115.128 to 115.135, inclusive, as set forth below, supersede §§ 115.128 to 115.149, inclusive (Circular No. 1607 of May 29, 1945):

GRAZING LEASES OF THE REVESTED AND RECONVEYED LANDS AND INTERMINGLED PUBLIC DOMAIN LANDS

AUTHORITY: §§ 115.128 to 115.135 issued under sec. 5, 50 Stat. 875.

GRAZING LEASES OF THE REVESTED AND RECONVEYED LANDS AND INTERMINGLED PUBLIC DOMAIN LANDS

§ 115.128 *Statutory authority.* Section 4 of the act of August 28, 1937 (50 Stat. 875) authorizes the Secretary of the Interior in his discretion to lease for grazing purposes any revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in the State of Oregon, hereinafter referred to as O. and C. lands, which may be so used without interfering with the production of timber or other purposes specified in section 1 of the act, and to formulate rules and regulations for the use, protection, improvement, and rehabilitation of such grazing lands. In addition to issuing grazing leases for O. and C. lands under the provisions of §§ 115.128 to 115.135, grazing leases also will be issued under such sections for such lands and intermingled public lands, or for public lands in and West of Range 5 East, or West of Klamath Lakes and Link River in Ts. 36 to 41 S., Rs. 8 to 9 E., inclusive, Willamette Meridian, Oregon.[1]

[1] For authority to issue grazing leases on public domain lands outside of established grazing districts, see Part 160 of this chapter.

§ 115.129 *Policy.* Since the statutory authority for grazing on the O. and C. lands subordinates such use to the primary purposes of the act, namely, to provide a permanent source of timber supply by managing the lands in conformity with the sustained-yield principle, protect water sheds, regulate streamflow, and contribute to the economic stability of local communities and industries, no lease will be issued unless the Regional Administrator of the Bureau of Land Management at Portland, Oregon, who is charged with the administration of grazing on such lands, determines that grazing on the lands to be included in the lease will not interfere with the production of timber, or any of the other purposes of the act.

§ 115.130 *Grazing of livestock kept for domestic use.* Bona fide settlers or prospectors may apply to the regional administrator for permission to graze without charge not more than a total of 10 head of milk and work stock on the O. and C. lands, or such lands and intermingled public domain lands. Such permission may be granted by the regional administrator, in his discretion, upon such conditions as he may prescribe.

§ 115.131 *Crossing permits.* The regional administrator may permit the transit of stock on established stock driveways or thoroughfares on O. and C. lands, or such lands and intermingled public domain lands, free of charge. Under such conditions and restrictions as are necessary, the regional administrator may also grant permission to cross allotments of other lessees, areas closed to grazing, or unleased lands, and such permission must be obtained before such crossing occurs. The permittee shall be liable for any damage caused to the range.

§ 115.132 *Application and lease.* An application for a grazing lease shall be made on Form 4–721 in the manner set forth in § 160.5 of this chapter. An application may include O. and C. lands or public lands or both. Leases shall be issued in the manner set forth in § 160.10 of this chapter, and the lease rental shall be computed in accordance with § 115.133.

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§ 115.133 *Rental.* (a) The lessee shall pay in accordance with the terms of the lease, an annual rental computed in conformity with the following rate tabulations. However, when warranted by circumstances, including changed marketing conditions, the regional administrator may establish any other appropriate schedule of rental rates for leases issued under §§ 115.128 to 115.135, a copy of which shall be transmitted to the Director.

Estimated grazing capacity in acres per A. U. M.	Estimated grazing capacity in animal units year-long per section	Yearly lease-rate per acre
107.00	0.5	.005
53.00	1.0	.010
38.00	1.5	.013
25.00	2.0	.020
20.00	2.5	.025
18.00	3.0	.028
16.00	3.5	.031
14.00	4.0	.036
12.00	4.5	.042
11.00	5.0	.045
10.00	6.0	.05
7.50	7.0	.067
6.50	8.0	.077
6.00	9.0	.083
5.50	10.0	.091
5.00	11.0	.10
4.50	12.0	.11
4.00	13.0	.125
3.75	14.0	.13
3.50	15.0	.14
3.25	16.0	.15
3.00	17.0	.17
2.75	19.0	.18
2.50	21.0	.20
2.25	24.0	.22
2.00	27.0	.25
1.75	30.0	.29
1.50	36.0	.33
1.25	43.0	.40
1.00	53.0	.50
0.50	107.0	1.00
0.25	213.0	2.00

(b) One cow or one horse or five sheep or five goats constitute one animal unit. The minimum rental charge shall be fixed at not less than $1.00 per annum. The rental may be adjusted to reflect differences in numbers of livestock authorized to be grazed, changes in carrying capacity, and changes in authorized rates of rental at the end of the third year of the lease, and at the end of each subsequent three-year period.

§ 115.134 *Timber and other uses of land.* A lease issued for grazing purposes will not entitle the lessee to cut and remove timber from the land, or to take any other asset therefrom, or to use such land for purposes other than grazing. In order to obtain such rights or privileges, the lessee must make application therefor in accordance with the governing laws and regulations.

§ 115.135 *Governing regulations; applications and leases subject to regulations.* Applications filed and leases issued under §§ 115.128 to 115.135, inclusive, shall be subject to the regulations therein, as well as to the regulations contained in Part 160 of this chapter relating to grazing leases issued pursuant to section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended (43 U. S. C. sec. 315m), to the extent that the latter are not inconsistent with the former. The leases will also be subject to the standard terms and conditions set forth therein, and to any other terms and conditions which, in his discretion, the regional administrator may require.

Sections 115.128 to 115.135, inclusive, will become effective 60 days from date of approval thereof by the Secretary of the Interior.

MARION CLAWSON,
Director.

Approved: July 11, 1950.

OSCAR L. CHAPMAN,
Secretary of the Interior.

[F. R. Doc. 50-6106; Filed, July 14, 1950; 8:45 a. m.]

Replaced by no. 1807

Office Copy

Obsolete

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1760]

PART 160—GRAZING LEASES

This part is revised to read as follows, effective 60 days from date of approval thereof by the Secretary of the Interior:

AUTHORITY: §§ 160.1 to 160.23 issued under sec. 2, 48 Stat. 1270; 43 U. S. C. 315a.

§ 160.1 *Statutory authority.* Section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended, authorizes the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands outside of established grazing districts in the continental United States only. Grazing leases for other public lands intermingled with the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant lands which are located west of the Cascade Mountain Range Divide, or in and west of Range 5 East, or west of Klamath Lakes and Link River in Ts. 36 to 41 S., Rs. 6 to 9 E., inclusive, Willamette Meridian, Oregon, will be issued pursuant to and will be governed by the provisions of Part 115 of this chapter.

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§ 160.2 *Definitions.* (a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Regional administrator" means the proper regional administrator, Bureau of Land Management.

(d) "Manager" means manager of the proper land office. Where there is no land office, it means the Director, Bureau of Land Management.

(e) "Signing Officer" means the Government official who has been duly authorized to issue a grazing lease.

(f) "Field Office" means any office of the Bureau of Land Management, including the land office, near the lands applied for and in the State in which such lands are situated. If there is no land office or other field office in the State, it means the office of the Director, Bureau of Land Management, Washington 25, D. C.

(g) "The act" means the act of June 28, 1934 (48 Stat. 1269), as amended.

§ 160.3 *Classes of applicants; preference rights.* The act, as amended, provides for the issuance of grazing leases to classes of applicants in the following order:

(a) Preference-right leases to applicants who are the owners, homesteaders, lessees, or other lawful occupants of lands contiguous to or cornering on an isolated or disconnected tract embracing 760 acres or less [1] for the whole of such tract, upon the terms and conditions prescribed by the Secretary, provided the preference-right is asserted during a period of 90 days after such tract is offered for leases.[2]

(b) Preference-right leases to applicants who are owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit the proper use of such contiguous lands.

(c) Leases where no preference-right applicant is involved.

[1] Where the lands applied for include the even-numbered sections within the limits of a railroad grant, even though in the aggregate such lands exceed 760 acres, each such section will be considered as an isolated or disconnected tract within the meaning of this provision. The difference between the higher preference right accorded under this paragraph and the preference accorded under paragraph (b) of this section is that the applicant is not required to demonstrate that the public lands are necessary for the proper use of the contiguous or cornering lands, except where there are conflicting applications of the same class of applicants.

[2] By Departmental Notice of July 31, 1937, all vacant, unreserved and unappropriated public lands, exclusive of Alaska, not included in an established grazing district, were then offered for lease under section 15; all lands not then subject to lease under section 15 because of their appropriation or reservation, were offered for lease as of the date any such lands first became subject to lease.

§ 160.4 *Qualifications of applicants.* An applicant for a grazing lease is qualified if the applicant

(a) Is a citizen of the United States, or

(b) Has filed a declaration of intention to become a citizen: *Provided,* That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any satisfactory reason for such failure, shall be disqualified to receive a grazing lease or any renewal of an existing lease until he has actually attained citizenship, or

(c) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the lands applied for are located and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under paragraphs (a) and (b) of this section.

§ 160.5 *Application and lease.* An application for lease shall be executed in triplicate on combined application and lease form (4–721) and filed in triplicate in any field office of the Bureau of Land Management in the state in which the lands applied for are situated.[3] The applicant's signature to the application shall be considered to be his signature to and his acceptance of the lease when executed by the signing officer, without prejudice to the applicant's right to appeal from the disallowance of his application as to any part of the lands applied for or from the issuance of a lease for a shorter term than that applied for.

§ 160.6 *No right conferred by application, prior to lease.* The filing of an application will not segregate the land applied for from application by other persons for a grazing lease or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.

§ 160.7 *Protests.* Protests against the approval of an application for a lease should be filed in the same manner and number of copies as applications for a grazing lease, contain a complete disclosure of all facts upon which the protest is based, and describe the lands in-

[3] 18 U. S. C. sec. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

volved in such protest, and should be accompanied by evidence of service of a copy of the protest on the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should also be accompanied by an application for a grazing lease.

§ 160.8 *Leases of withdrawn or reserved lands.* Leases may be issued for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[4] if the use of the land for grazing is not inconsistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with the regulations, § 295.7 (c) of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed by the Director of the Bureau of Land Management for the protection and use of the land for the purpose for which it was withdrawn or reserved.

§ 160.9 *Action on defective application or where the lands applied for are not subject to grazing leasing.* Upon the filing of any application, the officer receiving it may require any defects in the application to be cured or additional information to be provided. The signing officer may reject any application if the applicant fails to cure defects in the application within the time allowed, which period shall not be less than thirty days from the date of receipt of notice of such defects by the applicant. If the application must be rejected because of the status of the land for which application is made as where land is in an allowed entry, otherwise appropriated or reserved and not subject to lease under the act, or not public land, a manager, if his office has land status, or a signing officer shall reject the aplication.

§ 160.10 *Disposition of protests and conflicting applications.* (a) The lease will be executed by the signing officer and transmitted to the lessee only after final action is taken on any protests or timely appeals which may have been filed. The lease will provide for an allowance of forage for wildlife, and within the discretion of the signing officer the number of livestock to be grazed, proper grazing season or reservations for authorized trailing across the land, and will contain the standard provisions set forth in the combined application and lease form, together with any other terms, conditions, or reservations which the signing officer in his discretion may deem necessary and proper.

(b) In those cases where more than one applicant applies for the same land and where it appears that a division of the lands should be made, such conflicting applicants will be given an opportunity to agree to a division of the lands prior to a determination by the signing officer as to the disposition of such conflicting applications or division of the lands.

(c) After a division of the range has been made either by agreement between applicants which is acceptable to the signing officer, or by determination of the signing officer where there is no acceptable agreement, any conflicting applications or protests filed subsequent thereto will be rejected.

§ 160.11 *Reduction in leased area; adjustment of grazing use to conform with changes in grazing capacity.* The leased area may be reduced if it is determined that such area is required for the protection of sources of water supply to communities, or for camping places, stock driveways, roads and trails, or town sites, or for feeding grounds near communities for the use of domestic livestock or near the slaughtering or shipping points for use of stock to be marketed or for other public purposes; the authorized grazing use may be adjusted to conform to changes in grazing capacity estimates. In the case of any such reduction or adjustment, a proportionate adjustment will be made in the rental for the lease years commencing subsequent to the notice of such reduction or adjustment.

§ 160.12 *Leased lands subject to classification and disposition; compensation to lessee for loss of lands and for improvements.* (a) Lands embraced in a grazing lease are subject to classification and disposition under the provisions of sections 7 and 14 of the act of June 28, 1934 (48 Stat. 1272, 1274), as amended, or other public land laws: *Provided,* That before any application for such classification and disposition is allowed, evidence is furnished that the applicant has agreed to compensate the lessee for any grazing improvements placed on the lands under the authority of the lease or permit in an amount to be mutually agreed upon. If the parties are unable to agree as to the amount and time for payment for such improvements, the amount and time of payment shall be fixed by the signing officer. The failure of the applicant to pay the lessee, in accordance with the agreement or the amount fixed by the signing officer within the time allowed for payment, shall be just cause for cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application.

(b) Where part of the leased lands are disposed of as provided by this section, the subsequent annual rental charges will be reduced proportionately to reflect the loss of the lands from the leasehold. Such reduced rentals shall apply to rentals for the lease years commencing subsequent to the notice of such reduction.

(c) The holder of a grazing lease shall be compensated, for the loss resulting from the use of lands embraced in the lease for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the department or agency of the Federal Government making such use.

§ 160.13 *Access to leased lands; temporary closing of leased area.* (a) The issuance of a grazing lease does not alter or restrict the right of access across the leased lands by licensed hunters or fishermen or restrict their right to hunt and fish on such lands in accordance with the laws of the United States or of the state in which the lands are located, nor may the lessee interfere with such rights. Nor shall such lease restrict or limit prospecting, locating, developing, mining or patenting the mineral resources in the leased lands; miners, prospectors and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased lands.

(b) The regional administrator, in his discretion, may close temporarily to grazing portions of the leased lands whenever, because of depletion of the vegetal cover due to drought, epidemic, fire, or any other cause, such action is necessary to restore the forage on the range to its normal condition. Such temporary closing will not operate to exclude such lands from the lease.

§ 160.14 *Rental.* The lessee shall pay the lease rental in the amount and manner specified in the lease. The rental shall be computed in conformity with the following rate tabulations, unless for sufficient reasons a different rate is authorized by the Director:

GRAZING RENTAL RATE TABULATION

Estimated grazing capacity in acres per animal unit month	Estimated grazing capacity in animal units year-long per section	Yearly lease-rate per acre
107.00	0.5	$0.001
53.00	1.0	.002
38.00	1.5	.003
25.00	2.0	.004
20.00	2.5	.005
18.00	3.0	.006
16.00	3.5	.007
14.00	4.0	.008
12.00	4.5	.009
11.00	5.0	.010
10.00	6.0	.012
7.50	7.0	.014
6.50	8.0	.017
6.00	9.0	.019
5.50	10.0	.020
5.00	11.0	.023
4.50	12.0	.025
4.00	13.0	.027
3.75	14.0	.029
3.50	15.0	.030
3.25	16.0	.033
3.00	17.0	.035
2.75	19.0	.040
2.50	21.0	.045
2.25	24.0	.050
2.00	27.0	.055
1.75	30.0	.065
1.50	36.0	.075
1.25	43.0	.090
1.00	53.0	.110
0.50	107.0	.220
0.25	213.0	.440

One cow or one horse or five sheep or five goats constitute one animal unit. The rental charge will not in any case be fixed at less than $1.00 per annum. The rental may be adjusted to reflect changes in approved rates at the end of each three-year period to apply to the rental charges for the next three-year period.

§ 160.15 *Term of lease.* A lease may be issued for a period of not more than

[4] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of February 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with the principles of section 15 leases, under authority of subsection (1) of section 4, act of December 5, 1924 (43 Stat. 703, 43 U. S. C. sec. 501).

10 years. Renewals may be for periods of not more than 10 years, upon such terms and conditions as may then be prescribed.

§ 160.16 *Application for renewals.* An application for renewal of lease should be executed and filed in triplicate on the combined application and lease form (4–721) at least 90 days prior to the expiration of the lease. The application may also include a request for the consolidation of other outstanding grazing leases held by the lessee. Such application does not confer on the lessee any preference right to a renewal but will, however, authorize the exclusive grazing use of the lands by the lessee in accordance with the provisions of the lease pending final action on the application for renewal.

§ 160.17 *Construction and maintenance of improvements*—(a) *Permit required.* After the issuance of a lease, the lessee may fence the lands or any part thereof, develop water by wells, tanks; water holes, or otherwise, and make or construct other improvements for grazing or stock raising purposes, so long as such improvements do not impair the value of the lands or interfere with other uses: *Provided,* That a permit or cooperative agreement is obtained under the procedure set forth in this section. The lessee will be required to comply with the provisions of the laws of the state in which the leased lands are located with respect to the cost and maintenance of fences.

(b) *Applications for permits and cooperative agreements.* Applications for permits, cooperative agreements, or arrangements to construct and maintain range improvements shall set forth the location of such improvements by legal subdivision of the public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. When necessary to explain properly the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing the location of the improvements. Applications for a permit shall be made on Form 4–1115 and shall be filed in triplicate with the signing officer. Application for a cooperative agreement shall be made on Form 4–1119.

(c) *Action on the application.* Action will be taken on the application by the signing officer. If the application is approved, the signing officer will issue a permit or enter into a cooperative agreement for the construction and maintenance of the improvements which have been approved.

§ 160.18 *Removal of improvements.* (a) Upon the expiration of the lease or its earlier termination, the signing officer may in his discretion and upon written application filed by the lessee not more than 30 days after date of such expiration or termination, require a proposed subsequent lessee, prior to the execution of a new lease, to agree to compensate the lessee for any grazing improvements of a permanent nature that have been placed upon the leased lands under authority of a section 15 lease executed prior to November 4, 1948, or thereafter, under a permit issued under § 160.17 (b). The amount of such compensation shall be determined in accordance with the procedure set forth in § 160.12. The failure of the subsequent lessee to pay the lessee in accordance with such agreement shall be just cause for cancellation of the subsequent lessee's lease.

(b) The lessee will be allowed three months from the date of expiration or termination of the lease within which to remove such improvements as are not disposed of in the manner set forth above; if not removed or otherwise disposed of within the said period, such improvements shall become the property of the United States. No improvements may be removed at any time the lessee is in default with respect to the lease.

§ 169.19 *Cancellation of lease.* If the lessee shall fail to comply with any of the provisions of the regulations in this part or of the lease and such default shall continue for 30 days after service of written notice thereof, or if the lease was issued improperly through error with respect to a material fact or facts, the lease may be terminated and canceled by the signing officer.

§ 160.20 *Inspection of leased premises.* The land described in the lease shall be subject to inspection at all reasonable times by duly authorized representatives of the Department of the Interior. Other Federal agents, as well as game wardens, shall be permitted access to the lands in connection with necessary official business.

§ 160.21 *Assignment of lease; subleases.* No part of the leased lands may be subleased. The lessee may assign the lease only with the consent of the signing officer. The proposed assignment must be filed with the signing officer within 90 days from date of its execution, and shall contain all the terms and conditions agreed upon between the parties, and the assignee's agreement to be bound by the terms of the lease, together with triplicate copies of the combined application and lease form (4–721) properly executed by the assignee, setting forth all the data required thereby. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

§ 160.22 *Pledge of leases as security for loans; applications for extension of lease by borrower-lessee.* (a) A lease may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may ascertain from the signing officer the status of the grazing lease and other pertinent information relating thereto.

(b) An application by a borrower-lessee for an extension of the lease term should be executed and filed in triplicate on combined application and lease form (4–721). When it appears that such extension will be in accordance with applicable law and not contrary to the public interest, the signing officer in his discretion may extend the lease for a period not to exceed 10 years from the date of the loan, subject to such terms and conditions as are then provided by the regulations in this part, and by the signing officer.

(c) If the property of the lessee which was the basis for the granting of a preference right is acquired by the lending agency through foreclosure or otherwise, such agency or its occupants of the property or a purchaser of the property from the agency, if qualified, may apply on combined application and lease form (4–721) to be recognized as the new lessee. If, in selling the property, the lending agency takes back a mortgage on the property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files in the office of the signing officer notice that it has made a loan and has accepted a grazing lease as security therefor, in conformity with the provisions of this section, such agency will be advised of any action taken affecting the lease.

§ 160.23 *Appeals; filing.* An appeal from any decision rendered pursuant to §§ 160.1 to 160.23, inclusive, may be taken to the Director and the Secretary, in accordance with the rules of practice (Part 221 of this chapter). The appeal should be filed with the officer who rendered the decision.

NOTE: The reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

ROSCOE E. BELL,
Associate Director.

Approved: July 11, 1950.

OSCAR L. CHAPMAN,
Secretary of the Interior.

[F. R. Doc. 50–6107; Filed, July 14, 1950, 8:45 a. m.]

Office File Copy

Due in effect 6/2/57

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1761]

PART 108—PATENTS

PART 217—REPAYMENTS

MISCELLANEOUS AMENDMENTS

1. The section headnote and paragraph (d) of § 108.1 are amended to read as follows:

§ 108.1 *Issuance of patents; transmittal to land office.* * * *

(d) When a patent issued on or after August 1, 1950, is ready for delivery it will be transmitted to the patentee or his or her recognized agent or successor in interest.

(R. S. 2478; 43 U. S. C. 1201)

2. Section 108.2 is amended to read as follows:

§ 108.2 *Delivery of patents.* Original patents (issued before August 1, 1950) on file in land offices, or which have been returned to the Washington office of the Bureau of Land Management from such offices upon their discontinuance, may be procured upon proper request therefor made to the Washington office of the Bureau of Land Management.

(R.S. 2478; 43 U.S.C. 1201)

3. Section 217.20 is amended to read as follows:

See Circ 5134 728.

§ 217.20 *Surrender of receipts and duplicate certificates.* The receipts showing the payments of the money claimed must be surrendered, and also the duplicate certificates whenever such have issued; but if the same have been lost or destroyed or are not available for any reason, a statement showing the facts must be furnished.

(Sec. 4, 21 Stat. 287; 43 U. S. C. 263)

MARION CLAWSON,
Director.

Approved: July 31, 1950.

WILLIAM E. WARNE,
Acting Secretary of the Interior.

[F. R. Doc. 50-6862; Filed, Aug. 4, 1950; 8:45 a. m.]

Published in Federal Register Vol. 15 No. 151 of August 5, 1950, page 5049

Interior—Duplicating Section, Washington, D. C. 80669

Office Copy

This replaces #1408-a

Circular No. 1762

Obsolete - See Circ 1854

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Replaced by Circular 1973 (11/58)

EXCHANGES OF PRIVATELY OWNED LANDS UNDER TAYLOR GRAZING ACT

Regulations contained in Part 146, Title 43
of the Code of Federal Regulations

(Reprint, August 21, 1950, with amendments. These regulations are affected by Order No. 427 approved by the Secretary of the Interior on August 16, 1950, which authorizes the Regional Administrators to perform functions theretofore performed by the Director, Bureau of Land Management, in connection with exchanges made under this part.)

TABLE OF CONTENTS

Authority: Sec. 146.1 to 146.9 issued under sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

EXCHANGES OF PRIVATELY-OWNED LANDS WITHIN OR WITHOUT GRAZING DISTRICTS, WHEN PUBLIC INTERESTS WILL BE BENEFITED

Section 146.1 Statutory authority. Subsections (b) and (d) of section 8 of the Taylor Grazing Act of June 28, 1934, as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976; 43 U.S.C. 315g), authorize the Secretary of the Interior when the public interests will be benefited thereby to accept on behalf of the United States title to any privately owned land within or without the boundaries of a grazing district and in exchange therefor to issue a patent not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than 50 miles within the adjoining State nearest the base land. Either party to an exchange may make reservations of minerals, easements, or rights of use. Whether or not an exchange will benefit the public interests is a question of fact to be determined by the Secretary of the Interior in the light of all the circumstances.

146.2 Application and statements required.[1/] (a) Persons, firms, or corporations desiring to exchange lands pursuant to sec. 146.1 should file in the land office having jurisdiction over the selected lands or in th Bureau of Land Management, when there is no land office within the State, an application, in triplicate, setting forth by legal subdivisions of the public land surveys the lands offered to the Government and the lands to be selected in exchange therefor. The application should contain the full name and post office address of the applicant, state whether or not any reservation of minerals, easements, or other rights in or to the offered lands are desired, and what use thereof is contemplated. It should also show the reservations or easements which are acceptable to the applicant and are to be made by the United States affecting the selected lands.

(b) The application must be accompanied by a statement showing that the applicant is legally capable of consummating the exchange, that he is the owner of the lands offered in exchange, that such offered lands are not the basis of another selection or exchange, and that the selected lands are unappropriated and are not occupied, claimed, improved, or cultivated by any person adversely to the applicant.

(c) The application must be accompanied with a corroborated statement relative to springs and water holes on the selected lands, in accordance with secs. 292.1-292.9. The application must also be accompanied with a statement showing that the lands relinquished and the lands selected are approximately of equal value. The act requires that the value of the selected lands shall not exceed that of the offered lands, consideration being given to any reservation of minerals or easements which may be made by the applicant or the United States. The values of both offered and selected lands are to be determined by the Secretary of the Interior.

(d) No fee is required except that the applicant shall pay one-half of the advertising cost as provided in sec. 146.5.

(Circ. 1408, September 3, 1936, as amended by Circular 1661.)

146.3 Action on applications; report. (a) If the application for exchange appears regular and in conformity with the law and the regulations, the manager will assign a serial number thereto, and after appropriate notations have been

1/ 18 U.S.C., sec. 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

made upon the records of the land office, will transmit a duplicate of the application to the Regional Administrator, for consideration, together with a report, in duplicate, as to any conflicts of record. Should it appear necessary a field examination will be authorized.

(b) The Regional Administrator, if necessary, will report as to the values of the offered and selected lands; whether the selected lands are occupied, improved, cultivated, or claimed by another; whether the selected lands contain minerals, timber, springs, water holes, or hot or medicinal springs; whether any proposed reservation by the applicant in the offered lands will affect the equality of the values; whether there are any reasons why the exchange should not be consummated; and such facts as will aid in determination of whether the proposed exchange is in the public interests. 2/

146.4 Evidence required. When a field investigation report is received and an exchange of equal values has been established, the Director of the Bureau of Land Management, unless he has reasons to do otherwise, will direct publication of notice of the contemplated exchange, and will require the applicant, through the manager of the land office, to submit proof of publication of notice, a deed of conveyance of the offered lands duly recorded, an acceptable policy of title insurance, or an abstract of title showing that at the time the deed of conveyance to the United States was recorded the title to the lands covered by such deed was in the party making the conveyance, a certificate that the lands as conveyed were free from judgments or mortgage liens, pending suits, tax assessments, or other encumbrances, and a certificate by the proper official of the county in which the lands are situated showing that all taxes or assessments levied or assessed against the lands conveyed to the United States, or that could operate as a lien thereon, have been duly paid, whether there is a tax or assessment due on such lands or that could operate as a lien thereon but which tax or assessment is not yet payable and that there are no unredeemed tax sales and no tax deeds outstanding against such lands conveyed to the United States. 3/

146.5 Publication and posting; cost of publication. The publication notice must give the name and post office address of the applicant, serial number and date of the application, act under which application is filed, describe both the offered and selected lands in terms of legal subdivision of the public land surveys, and state that the purpose of the notice is to permit all persons claiming the selected lands or having bona fide objections to such exchange an opportunity to file their protests or other objections in the land office or in the Bureau of Land Management, if there is no land office in the State in which the selected land is situated, together with evidence that a copy of such protest or objection has been served upon the applicant. One-half of the cost of publication of the notice must be at the expense of the applicant, and the notice must be published once a week for 4 consecutive weeks in some designated newspaper of general circulation in the county or counties in which may be situated the lands offered to the United States, and in the same manner in some like newspaper published in any county in which may be situated any lands selected in exchange. In the event the newspaper is a daily, the publication should be made in the Wednesday issue thereof. A similar notice will be posted in the land office during the required period of publication and the manager shall certify as to the posting. Publication

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2/ Circ. 1474, July 8, 1940 as amended by Circ. 1543, May 21, 1943.

3/ Circ. 1408, September 3, 1936, as amended by Circ. 1543.

of notice will be directed by the Bureau of Land Management in a certain newspaper or newspapers designated by the Director of the Bureau of Land Management in instructions to the manager. Each newspaper will collect 50 per cent of the cost of publication from the applicant and submit proper vouchers to the United States for the remaining 50 per cent of such cost. Proof of publication of notice shall consist of a statement by the publisher, or foreman, or other proper employee of the newspaper, showing the dates of publication, and attaching thereto a copy of the notice as published. The manager shall transmit such evidence of publication to the Bureau of Land Management with his report as to whether or not protests or contests have been filed against the proposed exchange, and shall certify as to the posting of notice in his office.

(Circular 1408, September 3, 1936.)

146.6 Deed to United States. The deed of conveyance to the United States must be executed, acknowledged, and duly recorded in accordance with the laws of the State in which the lands are situated. Such revenue stamps as are required by law must be affixed to the deed and canceled. The deed should recite that it is made "for and in consideration of the exchange of certain lands, as authorized by section 8 of the act of June 26, 1934 (48 Stat. 1272), as amended by section 3 of the act of June 26, 1936 (49 Stat. 1976)." Where such deed is made by an individual, it must show whether the person making the conveyance is married or single. If married, the wife or husband of such person as the case may be, must join in the execution and acknowledgment of the deed in such manner as to bar effectually any right of courtesy or dower, or any claim whatsoever to the land conveyed, or it must be fully and satisfactorily shown that under the laws of the State in which the land conveyed is situated, such husband or wife has no interest whatsoever, present or prospective, which makes his or her joining in the deed of conveyance necessary. Where the deed of conveyance is by a corporation, it should be recited in the instrument of transfer that the deed was executed pursuant to an order or by the direction of the board of directors, or other governing body, and a copy of such order or direction must accompany such instrument of transfer and both should bear the impression of the corporate seal.

146.7 Abstract of title. The abstract of title must show that the title memoranda contained therein are a full, true and complete abstract of all matters of record or on file in the offices of the recorder of deeds and in the offices of the clerks of courts of record of that jurisdiction, including all conveyances, mortgages, pending suits, judgments, liens, lis pendens or other encumbrances or instruments which are required by law to be filed with the recording officer and which appear in the records of the office of the clerks of courts of record affecting in any manner whatsoever the title to the land to be conveyed to the United States. The abstract of title may be prepared and certified by the recorder of deeds or other proper officer under his official seal, or it may be prepared and authenticated by an abstracter or by an abstract company approved by the Bureau of Land Management, in accordance with sec. 211.1.

146.8 Taxes. In case taxes have been assessed or levied on lands conveyed to the United States, and such taxes are not due and payable until some future date, the applicant, in addition to the certificate required by sec. 146.7 relative to taxes and tax assessments, may furnish a bond with qualified surety for the sum of twice the amount of taxes paid on the land for the previous year in order to indemnify the United States against loss for the tax as assessed or levied but not yet due and payable. In lieu of the bond the applicant may submit a sum similar to that required in the bond, and if and when proper evidence is furnished showing the taxes on the land conveyed have been paid in full, the said sum will be returned to the applicant.

146.9 Approval of exchange; Rules of Practice to be followed. (a) The publication of notice, conveyance, abstract of title and other evidence required of the applicant will, upon receipt in the Bureau of Land Management, be examined, and if found regular and in conformity with law, and there are no objections, title will be accepted to the offered land and patent will issue for the land selected in exchange.

(b) Should information available to the Bureau of Land Management disclose inequalities of value, the Director of the Bureau of Land Management will advise the applicant and afford him an opportunity to adjust matters so as to bring the exchange within the provisions of the law.

(c) Notices of additional requirements, rejection or other adverse action will be given, and the right of appeal recognized, in the manner prescribed by the Rules of Practice, Part 221. Protests against exchanges should be filed in the land office from where they will be transmitted to the Bureau of Land Management for consideration and disposal.

(d) Should the application for exchange be finally rejected or the selection canceled for any reason, the abstract of title will be returned, and the applicant will be advised of his right to apply for a quitclaim deed under existing law for the land conveyed to the United States.

(e) An application for exchange will be noted "suspended" by the manager and unless disallowed, the lands applied for in exchange will be segregated upon the records of the land office and the Bureau of Land Management.

(Circular 1408, September 3, 1936 as amended by Circular 1474 and Circular 1543.)

81087

Interior--Duplicating Section, Washington, D. C.

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1763]

PART 149—EXCHANGES FOR THE CONSOLIDATION OR EXTENSIONS OF INDIAN RESERVATIONS OR INDIAN HOLDINGS

PUEBLO INDIANS AND CANONCITO NAVAJO GROUP IN NEW MEXICO

The following center head and sections are added to Part 149 immediately after § 149.83:

EXCHANGES FOR THE CONSOLIDATION OF INDIAN HOLDINGS IN CERTAIN AREAS SET APART FOR THE PUEBLO INDIANS AND THE CANONCITO NAVAJO GROUP IN NEW MEXICO

AUTHORITY: §§ 149.84 to 149.86 issued under sec. 2, Pub. Law 226, 81st Cong.

§ 149.84 *Policy.* For the purpose of consolidating Indian lands, as authorized by section 2 of Public Law 226, 81st Congress (63 Stat. 604), private or State-owned lands or interests therein, including improvements and water rights, situated within the boundaries of the Indian area described in section I of the notice dated March 25, 1950, and published in the FEDERAL REGISTER (15 F. R. 1851, 1852–1855), may be offered in exchange for lands or interests therein, including improvements and water rights, selected within the boundaries of such Indian area, or within the public domain area described in section II of the notice dated March 25, 1950 (15 F. R. at pp. 1855–1857), or within any public domain in New Mexico.

§ 149.85 *Applications for exchange; consent of Indians.* (a) Except as modified by this section and § 149.86, applications for exchanges pursuant to §§ 149.84–149.86 must be filed, and the exchanges will be made, in accordance with §§ 146.2–146.9 of this chapter, covering exchanges of privately owned lands, and in accordance with §§ 147.2–147.12 of this chapter, covering exchanges of State-owned lands.

(b) The selected land or interest and the offered land or interest need not be in the same grazing district.

(c) Exchanges will be made only if the offered land or interest is similar in value to the selected land or interest.

(d) Each application for exchange must be accompanied by the written consent of the tribal authorities of the Pueblo or Navajo tribe within whose area either the offered or the selected land or interest is situated.

§ 149.86 *Deed of conveyance of offered land or interest.* The deed should recite that it is made "for and in consideration of the exchange of certain lands (or interests therein), as authorized by section 2 of the act of August 13, 1949 (63 Stat. 604)," and that the conveyance is made to the United States, as grantee in trust for the appropriate Pueblo Indian or Canoncito Navajo group.

OSCAR L. CHAPMAN,
Secretary of the Interior.

SEPTEMBER 11, 1950.

[F. R. Doc. 50-8087; Filed, Sept. 15, 1950; 8:45 a. m.]

Interior—Duplicating Section, Washington, D. C. 82377

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mission of commutation proof of an entry made under that act.

(R. S. 2478; 43 U. S. C. 1201)

3. Section 166.84 is amended to read:

§ 166.84 *Final proof.* Before proof may be submitted as a basis for patent under the act of April 28, 1904, as amended, the entryman must show that he has cultivated an amount equal to one-eighth of the area of the additional entry for at least one year after the additional entry is made and until the submission of final proof thereon. The cultivation may be performed on the original entry, on the additional entry, or on both, but where it is performed on the original entry it must be shown at the time of submission of final proof on the additional entry that the entryman still owns and occupies the original entry, and the cultivation must be in addition to that required and relied upon in making final proof on the original entry. No proof of residence will be required with respect to the additional entry.

The act of April 28, 1904, as amended, provides that final proof for the additional entry may be submitted only at the time of final proof for the original entry, or subsequent thereto, but it must be submitted within five years after the additional entry is made.

(R. S. 2478; 43 U. S. C. 1201)

4. Section 166.85 is amended to read:

§ 166.85 *Cancellation of original entry.* An additional entry under the act of April 28, 1904, as amended, cannot be based on an original entry which has been canceled. If for any reason an original entry is canceled after the additional has been allowed, the additional will be canceled also.

(R. S. 2478; 43 U. S. C. 1201)

OSCAR L. CHAPMAN,
Secretary of the Interior.

SEPTEMBER 11, 1950.

[F. R. Doc. 50-8089; Filed, Sept. 15, 1950; 8:45 a. m.]

[Circular No. 1764]

PART 257—LEASE OR SALE OF SMALL TRACTS, NOT EXCEEDING FIVE ACRES, FOR HOME, CABIN, CAMP, HEALTH, CONVALESCENT, RECREATIONAL, OR BUSINESS SITES

This part is completely revised as follows, effective 60 days after date of issuance hereof by the Secretary of the Interior:

AUTHORITY: §§ 257.1 to 257.20 issued under 52 Stat. 609, as amended; 43 U. S. C. 682a.

§ 257.1 *Statutory authority; lands which may be leased or sold.* (a) The act of June 1, 1938 (52 Stat. 609), as amended by the act of July 14, 1945 (59 Stat. 467; 43 U. S. C. 682a) authorizes the Secretary of the Interior, in his discretion, to lease or sell a tract, not exceeding 5 acres in reasonably compact form, of any vacant, unreserved, surveyed public land, or surveyed public land withdrawn or reserved by the Secretary of the Interior for any purposes, or surveyed lands withdrawn by Executive Orders Nos. 6910 of November 26, 1934, and 6964 of February 5, 1935, for classification, which the Secretary may classify as chiefly valuable as a home, cabin, camp, health, convalescent, recreational, or business site. The act is applicable to lands in such areas as grazing districts, but is not applicable to lands withdrawn by the Secretary solely under delegated authority (e. g., under Executive Order No. 9337, of April 24, 1943), or to land in such reservations as national forests, national parks or national monuments, or to the revested Oregon and California Railroad or the reconveyed Coos Bay Wagon Road grant lands, in Oregon. The lands may not be leased or sold until classified for small tract purposes; and may not be occupied until a lease is executed and delivered to the lessee.

(b) The act applies to public lands in Alaska, and permits employees of the Department of the Interior stationed in Alaska, in the discretion of the Secretary, to purchase or lease one tract in Alaska for any purpose under the act, except as a business site.

§ 257.2 *Definitions.* (a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Regional administrator" means the proper regional administrator, Bureau of Land Management.

(d) "Manager" means manager of the land office for the district where the land is situated. Where there is no land office, it means the regional administrator.

(e) "The act" means the act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended.

(f) Sites: (1) A "home site" is a site suitable for a permanent, year-round residence for a single person or a family.

(2) A "cabin site" is a site suitable for a summer, week-end, or vacation residence.

(3) A "camp site" is a site suitable for temporary camping and for the erection of simple or temporary structures and shelters, such as tents, tent platforms, etc.

(4) A "health site" is a site suitable for the temporary or permanent residence of a single person or of a family for the prevention or cure of disease or illness.

(5) A "convalescent site" is a site suitable for residence of a single person or family for the purpose of recuperation from a disease or illness.

(6) A "recreational site" is a site chiefly suitable for noncommercial outdoor recreation.

(7) A "business site" is a site suitable for some form of commercial enterprise.

§ 257.3 *Policy.* (a) It is the policy of the Secretary in the administration of the act of June 1, 1938, to promote the beneficial utilization of the public lands subject to the terms thereof, and at the same time to safeguard the public interest in the lands. To this end offers to lease sites will be considered in the light of their effect upon the conservation of natural resources and upon the welfare not only of the offerors themselves but of the communities or areas in which they propose to settle. Leases will not be awarded, for example, which would lead to private ownership or control of scenic attractions, or water resources, or other areas that should be kept open to public use. Nor will isolated or scattered settlement be permitted which would impose heavy burdens upon State or local governments for roads, schools, and police, health, and fire protection. Types of settlements or businesses which might create "eyesores" along public highways and parkways will be guarded against, and lands will not be leased or sold under the act if such action would unreasonably interfere with the use of water for grazing purposes or unduly impair the protection of watershed areas.

(b) No direct sale of lands will be made under the act. Use and improvement of the land under lease will be required before it may be purchased. Leases of lands which are classified for lease and sale will contain an option permitting the lessee to purchase as provided in § 257.13. Lands classified for lease only will not be sold and the option to purchase clause will not apply to such lands.

§ 257.4 *Classification of land.* (a) The regional administrator may classify lands under the act either on his own motion or upon the filing of an offer to lease, but no lease will be issued or sale authorized prior to classification of the land for such disposal. If the offer is in proper form and the status of the land warrants its consideration for classification under the act, the regional administrator upon receipt of the offer will proceed to make a determination whether ceed to make a determination whether the land should be classified for small tract purposes. If the tract is not suitable for such purposes, the offer to lease will be denied. Where the land has been withdrawn under the statutory powers of the Secretary, the concurrence of the bureau or agency having supervision over the land must be obtained prior to classification.

(b) Land may be classified as suitable for one or more of the types of sites specified in § 257.2, for disposal in tracts of 5 acres or less, depending on the character of the land, and either for lease and

sale, or for lease only, as specified in the classification order. Lands may be classified for lease and sale where found to be primarily suitable for use in accordance with the act, and where the disposal will not interfere with the use of private lands or with the administration of other Federal lands.

§ 257.5 *Qualifications of lessees; restrictions on lease.* (a) An offer to lease may be made by any person who is a citizen of the United States, or has declared his or her intention to become a citizen, who is 21 years of age or more, or, if under that age, is the head of a family. Unless warranted by special circumstances, where a husband and wife are living together, only one of them may acquire a tract under the act. Employees of the Department of the Interior stationed in Alaska may lease or purchase one tract in Alaska for any purpose under the act except business.

(b) Generally, no person will be permitted to hold, by lease or purchase, more than one tract under the act. Where more than one tract is needed, however, except as otherwise authorized by the regional administrator, each tract must be the subject of a separate offer to lease, complete in itself, and must be accompanied by a satisfactory showing that the allowance of more than one lease is warranted by the circumstances. In each offer to lease the offeror must furnish data sufficient to identify all other offers or applications under the act, if any, filed by him or by any member of his family residing with him. Such data should include the serial number of each such offer or application, the land office where filed, and the name and relationship to offeror.

§ 257.6 *Preference rights of offerors; veterans' preference.* (a) Where an offer to lease a tract is filed prior to the receipt by the manager of notice from the regional administrator that the area is under consideration for small tract classification, a preference right to lease will be accorded the offeror only if the land is thereafter classified for the type of site for which the offer was made, and the offeror agrees to conform his offer to the area and dimensions of the tract as specified in the classification order. An offer to lease, filed subsequent to the receipt by the manager of notice of contemplated classification and prior to issuance of the order, will not be accorded such preference right, but the offer will be retained by the manager pending classification of the land. If the land is classified for disposal under the act, the offer will be considered as a filing during an applicable period for simultaneous filings, provided the offer covers a tract subsequently established by the classification order, or the offeror conforms his offer thereto. If, however, the classification order provides for the use of the special procedure pursuant to § 257.8, such offer will be returned to the offeror, and will be accompanied by Form 4–775, "Drawing Entry Card", where it appears from the offer that the offeror, because of veterans' preference, is entitled to participate in the drawing under the special procedure.

(b) Where, prior to September 27, 1954, land is classified by the regional administrator on his own motion or the classification order embraces additional land, other than the tract for which a preference right is accorded under paragraph (a) of this section, veterans of World War II only and other persons entitled to credit for service of veterans of World War II, in accordance with 43 CFR 181.40 and 181.41, will have a preference right, for 90 days after the effective date of the classification of the lands, to file an offer to lease any of the remaining tracts (sec. 4, act of September 27, 1944; 58 Stat. 748; 43 U. S. C. 282). This preference right does not apply to veterans of World War I or other wars of the United States.

(c) Upon the expiration of the veterans' preference period, referred to in paragraph (b) of this section, any lands in the classification order not disposed of or embraced in pending valid offers to lease will become subject to filing of offers to lease by the public generally.

§ 257.7 *Offer to lease; general procedure.* (a) An offer to lease a site under the act must be filed on Form 4–776, "Offer to Lease and Lease under Small Tract Act", and in conformity with the instructions therein. Copies of the form may be obtained from the manager or the Director; and must be completed and filed in duplicate (in triplicate, if for a business site), with the manager or, if there is no land office in the State, with the Director. The duplicate forms need not be executed under oath but they must be signed by the offeror.[1] The offeror's signature to the offer will also constitute his signature to the lease, when the offer is accepted and executed by the proper officer on behalf of the United States.

(b) If the land has not been classified under this act, the offeror should describe the desired tract, not to exceed five acres, by aliquot parts of a legal subdivision. Where the land has been classified, the offeror should describe the selected tract in accordance with the classification order or plat of survey. In such cases the offeror may also indicate that in the event the selected tract is not available for lease to him, he is willing to accept a lease for any other available tract described in the classification order, which the manager may allocate to him.

§ 257.8 *Special procedure; drawing; notice.* (a) The special procedure provided in this section will be used whenever, in the opinion of the regional administrator or of the Director, a multiplicity of filings by those entitled to claim veterans' preference for service in World War II is anticipated during a simultaneous filing period to be provided for in an order of classification, in excess of the number of tracts available for lease, necessitating a drawing to determine priority. In such event, the classification order will state that the special procedure will be used and that a drawing, limited to persons claiming veterans' preference, will be held; it will indicate the number of small tracts available for lease; it will set out the minimum requirements, including veterans' credit for service in World War II; and other information, including the amount of rental and filing fees to be paid by those successful in the drawing.

(b) Any person who believes he has the necessary qualifications, including veterans' preference, upon request to the manager or the Director designating the classification order by number, may obtain Form 4–775, "Drawing Entry Card." The entry card, completely filled out in accordance with the accompanying instructions, must be returned within the filing period specified in the classification order in order to be eligible to participate in the drawing; it should not be accompanied by any payment of filing fee or rental. An entrant may file only one entry card under each classification order; if more than one card is filed, the entrant shall be ineligible to participate in the drawing or to obtain a lease under the classification order. A drawing of all properly filed cards will be held on the day stated in the classification order to establish an adequate list of eligibles and of alternates to whom will be allocated, in consecutive order, the available tracts.

(c) The successful entrants, to whom a tract has been awarded in the drawing, will be furnished in duplicate Form 4–776, "Offer to Lease and Lease", bearing the description of the tract allocated to the entrant. The forms must be completely filled out, signed and returned, accompanied by the proper rental and filing fees and evidence of qualification, within the time allowed by the manager. Where an entrant does not sign the lease forms or he was not qualified to enter the drawing, or for any reason fails to comply with the requirements within the time allowed, the award will be withdrawn and canceled upon the records, and the lot will become available to the alternate next in line of drawing.

(d) Entrants who are unsuccessful in the drawing and to whom no lot was allocated will be informed thereof by the return of their respective drawing-entry cards carying a notation to that effect. After the lots have been awarded and leases executed, the entry cards of the remaining unsuccessful alternates will be returned to them.

§ 257.9 *Filing fee.* Every offer to lease a small tract must be accompanied by a filing fee of $10. No fee is required for the filing of a "Drawing Entry Card" or with an application for purchase or for renewal of a lease, based on an outstanding lease. The filing fee will be retained in all cases, except where for any reason no lease is awarded to the offeror and no tract is allocated to him in accordance with § 257.7 (b)

§ 257.10 *Rental payment.* (a) If the land has been classified, the offer to lease must also be accompanied by the rental, as specified in the classification order, for the entire lease period. If, for any reason, a lease is not issued, the rental payment will be returned.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(b) Unless otherwise provided in the classification order, land classified for lease and sale will be leased for a three-year term with a rental of $15; land classified for lease only, except a business site lease, will be for a five-year term with a rental of $25 for the lease period. For a business site lease for five years the minimum rental is $100 for the lease period; the annual rental, however, will be based on percentages of the gross income as specified in the lease, Form 4-776.

Where the land has not yet been classified, an offer to lease a tract, for other than a business site, must be accompanied by a minimum rental payment of $15, and for a business site, $100. If the rental provided in the subsequent order of classification is greater than the rental payment accompanying the offer to lease, the deficiency must be paid before the lease will issue.

(c) If an offer to lease is not properly executed or is not accompanied by the required filing fee and rental payment or is otherwise irregular, it will not be accepted but will be returned to the offeror in the form received.

§ 257.11 *Issuance of lease.* The manager may issue leases for not to exceed five years, upon lands classified for lease only, and for not to exceed three years upon lands classified for lease and sale: *Provided*, (a) The offeror upon issuance of the lease will have only one tract under the act, and (b) the offer covers a tract established by the classification order. All other leases will be issued by the regional administrator. The lease, part of Form 4-776, will issue and be valid when executed by the proper officer on behalf of the United States. The lease will contain provisions relating to the improvements to be placed on the lands and such other conditions of occupancy as are set forth in the order of classification, including an appropriate set-back of the improvements from the boundaries of the leased tract. Plans for improvements may be submitted to the regional administrator for approval in advance of construction.

§ 257.12 *Assignment of lease; subleasing not permitted.* (a) The manager may act upon and approve assignments of leases, except that where the assignee already holds a small tract under the act, approval of the assignment will be in the discretion of the regional administrator. No assignment will be recognized unless and until approved by the appropriate officer. An assignment will not be approved until substantial improvements, suitable to the type of use for which the lease issued, are constructed on the land, except where, upon a showing made by the lessee satisfactory to the regional administrator and corroborated by the statement of at least one witness, the lessee's failure to construct such improvements was caused by unforeseen or unavoidable misfortune.

(b) Proposed assignments of leases must be submitted for approval in duplicate within 90 days from the date of execution. The proposed assignment must contain all the terms and conditions agreed upon by the parties thereto, must be accompanied by the same showing as to qualifications and holdings of the assignee as was required of the lessee in § 257.5, and must be supported by a statement that the assignee agrees to be bound by the provisions of the lease.

(c) The subleasing, in whole or in part, of a tract leased under the act will not be approved, and will constitute a violation of the terms of the lease.

§ 257.13 *Option to purchase; sale; patent.* (a) Lands will not be sold directly under the act but only on the basis of an outstanding lease, containing an applicable option to purchase clause. The option to purchase will apply only to tracts classified for lease and sale, and will afford the lessee or his duly approved successor in interest an opportunity to purchase the tract at or after the expiration of one year from the date the lease issued, provided the improvements required by the lease have been made, and the lessee or his successor in interest has otherwise complied with the terms and conditions of the lease. The option to purchase clause will set forth the appraised value of the unimproved land at the date the lease was issued. The net price at which the land may be purchased will consist of the appraised value plus the cost of survey, if any, necessary to describe the land properly, as provided in § 257.17, and minus an amount equal to the advance rental for each full lease year, if any, subsequent to the filing of the application to purchase.

(b) An application to purchase should be filed with the manager in duplicate on Form 4-775a during the term of the lease but not more than 30 days prior to the expiration of one year from the date of lease issuance, together with a statement as to the cost, type, and character of the improvements constructed on the land.

(c) If a sale is authorized, the applicant will be allowed 60 days from service of notice thereof to pay the amount required. If the purchase price is $100 or less, the entire amount must be paid within the 60-day period. If the price is more than $100 and not more than $200, at least $100 must be paid within the 60-day period and the balance within one year after such payment. If the price is more than $200, at least one-third of the purchase price but not less than $100 must be paid within the 60-day period, and the balance in two equal installments due, respectively, within one and two years after the date of the first payment.

§ 257.14 *Renewal of lease.* (a) An offer for the renewal of a lease must be filed not more than six months or less than 60 days prior to the expiration of the lease, and will accord the lessee or his approved successor in interest a preference right to a new lease only if it is determined that a new lease should issue, and upon such conditions and for such duration as may be fixed.

(b) The manager may act upon offers for renewal and issue new leases only if the land was classified for lease only, and the lessee has constructed satisfactory improvements on the tract appropriate to the type of use for which the lease originally issued, such as a substantial and presentable dwelling suitable for year-round or seasonal use where the land was classified for residence purposes. A lease for land classified for lease only will not be renewed if satisfactory improvements have not been constructed thereon during the lease term.

(c) A lease for land classified for lease and sale is not subject to renewal, except upon a showing satisfactory to the regional administrator, corroborated by the statement of at least one witness, that the lessee's failure to apply for sale of the tract is justified under the circumstances and that non-renewal of the lease would work an extreme hardship on the lessee.

§ 257.15 *Minerals; timber.* (a) Any lease or patent issued under the act will reserve to the United States (1) all deposits of coal, oil, gas, or other minerals, together with the right to prospect for, mine, and remove the same under such regulations as the Secretary may prescribe, and (2) all fissionable source materials, together with the right to prospect for, mine, and remove the same in accordance with the act of August 1, 1946 (60 Stat. 755; 42 U. S. C. 1801-1809). Any minerals subject to the leasing laws in the lands patented or leased under the terms of the act may be disposed of to any qualified person under applicable laws and regulations in force at the time of such disposal. No provision is made at this time to prospect for, mine, or remove the other kinds of minerals that may be found in such lands; and until rules and regulations have been issued, such reserved deposits will not be subject to prospecting or disposition.

(b) A lessee will not be permitted to cut timber from the leased lands without first obtaining permission from the regional administrator. Such permission will not be granted except where the timber is to be cut to clear the land or to make improvements thereon.

§ 257.16 *Rectangular survey; supplemental plats; streets and roads.* (a) The official township plats ordinarily provide the basis for descriptions of tracts, in compact form, in units of 5 acres or aliquot parts thereof. However, as an aid in the identification of the tracts on the ground, frequently it is desirable to subdivide, by survey, the areas classified for administration as small tracts in order that at least one corner of each such tract be marked on the ground. The condition of the original survey and the ease of identification of the individual tracts on the ground are governing factors in deciding whether additional surveys should be made. Such surveys, made simply for the purpose of marking corners of legal subdivisions of the rectangular surveys, are not considered as "special surveys," and the cost thereof will not enter into the selling price of the land. For convenience in description the tracts may be identified by lot numbers, but only by preparation of an official supplemental plat for that purpose by protraction from the subsisting record or based upon supplemental surveys in the field. Such identification will be effected as of the

date of official filing of the plat in the land office.

(b) Where a tract is situated in the fractional portion of a sectional lotting, a supplemental plat may be required to afford a suitable description. The plat will be prepared at the time the lease issues. If the subdivision of the sectional lotting would result in narrow strips or other areas containing less than 2½ acres, not suitable for sale or lease as separate units, such excess areas, in the discretion of the regional administrator, may be included in the adjoining 5-acre tracts.

(c) Unless otherwise provided in the classification order, the leased land will be subject to a right-of-way of not to exceed 33 feet in width along the boundaries of the tract for street and road purposes and for public utilities. The location of such access streets or roads may be indicated on a working copy of the official plat maintained in the land office; or where the land has been classified for lease and sale, the right-of-way may be definitely located prior or subsequent to the issuance of patents; and an appropriate clause reserving the easement for such right-of-way will be incorporated into each lease or patent.

§ 257.17 *Irregular tracts; cost of special survey.* Where, in the opinion of the regional administrator, the rectangular form is not the most desirable plan for development of an area, tracts irregular in form, not in excess of 5 acres each, may be leased or sold in accordance with the regulations in this part. In this matter the regional administrator may initiate action as an administrative measure, or may act upon an offer to lease. An offer to lease such tract should contain a metes and bounds description sufficiently complete to identify the location and boundaries of the land. A special official survey will be required of an irregular tract for purpose of identification and description in the lease or patent. If the action is initiated upon an offer to lease, the offeror will be required to make an advance payment to the manager, equal to the estimated cost of executing the survey, before the field work will be undertaken; he will be credited with any excess payments prior to the issuance of lease or patent. In the case of special surveys as administrative measures the cost of the survey will be considered as a normal expense under the regular appropriation available for surveying the public lands; and when the tracts are sold, the selling price shall not be less than the cost of survey of the particular tract. If there is a group of contiguous or closely associated tracts to be surveyed at one time, the cost of survey will be prorated among the several tracts on an acreage basis.

§ 257.18 *Tracts on unsurveyed land.* Unsurveyed public lands are not subject to lease or sale under the act. An offer filed for such lands will be rejected. However, if desired, the offeror may file a request for the survey of the lands with the regional administrator. The description must be sufficiently complete to identify the location, boundary, and area of the land. There should also be given, if possible, the approximate description or location of the land by section, township and range. A person who requests the survey of an area acquires no preferential right to apply for the land under the act upon the completion of the survey and the official filing of the plat. After the survey is completed and the official plat is placed on record, the surveyed area will be subject to the provisions of the act and an offer to lease may then be filed.

§ 257.19 *Termination or cancellation: removal of improvements.* (a) The lessee may terminate the lease, if he is not in default thereunder, subject to the consent of the regional administrator, by filing a notice of relinquishment of the lease in the proper land office. The manager may cancel any lease where the lessee has failed to comply with any of the terms, covenants, and stipulations of the lease, or to abide by any of the regulations in this part, and such default has continued for 30 days after written notice thereof.

(b) No refund will be made of rental for the unexpired term of a lease relinquished by the lessee or canceled by the manager for cause.

(c) Upon the termination, cancellation, or expiration of a lease, the lessee will have a period of 90 days within which to remove his improvements from the land or to make other disposition thereof; upon his failure to do so within the time allowed, the improvements will become the property of the United States.

§ 257.20 *Appeals.* An appeal pursuant to the rules of practice, Part 221 of this chapter, may be taken from the decision of any subordinate officer of the Bureau of Land Management to the Director, and from the Director's decision to the Secretary.

NOTE: The reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

OSCAR L. CHAPMAN,
Secretary of the Interior.

SEPTEMBER 11, 1950.

[F. R. Doc. 50-8088; Filed, Sept. 15, 1950; 8:45 a. m.]

Appendix—Public Land Orders

[Public Land Order 671]

ALASKA

RESERVING PUBLIC LANDS FOR USE OF THE DEPARTMENT OF THE AIR FORCE FOR MILITARY PURPOSES

By virtue of the authority vested in the President and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Subject to valid existing rights, the following-described public lands in Alaska are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining and mineral-leasing laws, and reserved for the use of the Department of the Air Force for military purposes:

Beginning at a point on the mean high tide line on the Bering Sea at the northwestern tip of St. Lawrence Island, approximate latitude 63°50′ N., longitude 171°36′ W., thence by metes and bounds:

S. 21°00′ W., 2.7 miles.
N. 48°30′ W., 1.1 miles.
N. 15°00′ E., 1.7 miles to a point on the mean high tide line of Bering Sea.
N. 76°00′ E., 1.6 miles to point of beginning.

The tract described contains approximately 1,700 acres.

Two road rights-of-way, 30 feet wide, described as follows:

Beginning at CAA Housing Site located near the village at Gambell, St. Lawrence Island, Alaska, a right-of-way 15 feet on each side of center line as follows:

Road No. 1. From point of beginning, South 63° 00′ E. one and three-tenths (1.3) miles, more or less, to point of intersection with Western boundary of the above described tract.

Road No. 2. From point of beginning, South between the Runway and Troutman Lake two and three-quarters (2.75) miles; thence running Southeasterly generally along the South bank of stream one and one-half (1.5) miles; thence North 21°00′ East generally two and three-quarters (2.75) miles; thence two-tenths (0.2) miles, more or less, to points of intersection with East Boundary of the above-described site.

This order shall take precedence over but not otherwise affect the Executive Order of January 7, 1903, withdrawing lands as a reindeer reserve, so far as such order affects above-described lands.

It is intended that the lands described above shall be returned to the administration of the Department of the Interior when they are no longer needed for the purpose for which they are reserved.

OSCAR L. CHAPMAN,
Secretary of the Interior.

SEPTEMBER 11, 1950.

[F. R. Doc. 50-8086; Filed, Sept. 15, 1950; 8:45 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1764]

PART 257—LEASE OR SALE OF SMALL TRACTS, NOT EXCEEDING FIVE ACRES, FOR HOME, CABIN, CAMP, HEALTH, CONVALESCENT, RECREATIONAL, OR BUSINESS SITES

This part is completely revised as follows, effective 60 days after date of issuance hereof by the Secretary of the Interior:

AUTHORITY: §§ 257.1 to 257.20 issued under 52 Stat. 609, as amended; 43 U. S. C. 682a.

§ 257.1 *Statutory authority; lands which may be leased or sold.* (a) The act of June 1, 1938 (52 Stat. 609), as amended by the act of July 14, 1945 (59 Stat. 467; 43 U. S. C. 682a) authorizes the Secretary of the Interior, in his discretion, to lease or sell a tract, not exceeding 5 acres in reasonably compact form, of any vacant, unreserved, surveyed public land, or surveyed public land withdrawn or reserved by the Secretary of the Interior for any purposes, or surveyed lands withdrawn by Executive Orders Nos. 6910 of November 26, 1934, and 6964 of February 5, 1935, for classification, which the Secretary may classify as chiefly valuable as a home, cabin, camp, health, convalescent, recreational, or business site. The act is applicable to lands in such areas as grazing districts, but is not applicable to lands withdrawn by the Secretary solely under delegated authority (e. g., under Executive Order No. 9337, of April 24, 1943), or to land in such reservations as national forests, national parks or national monuments, or to the revested Oregon and California Railroad or the reconveyed Coos Bay Wagon Road grant lands, in Oregon. The lands may not be leased or sold until classified for small tract purposes; and may not be occupied until a lease is executed and delivered to the lessee.

(b) The act applies to public lands in Alaska, and permits employees of the Department of the Interior stationed in Alaska, in the discretion of the Secretary, to purchase or lease one tract in Alaska for any purpose under the act, except as a business site.

§ 257.2 *Definitions.* (a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Regional administrator" means the proper regional administrator, Bureau of Land Management.

(d) "Manager" means manager of the land office for the district where the land is situated. Where there is no land office, it means the regional administrator.

(e) "The act" means the act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), as amended.

(f) Sites: (1) A "home site" is a site suitable for a permanent, year-round residence for a single person or a family.

(2) A "cabin site" is a site suitable for a summer, week-end, or vacation residence.

(3) A "camp site" is a site suitable for temporary camping and for the erection of simple or temporary structures and shelters, such as tents, tent platforms, etc.

(4) A "health site" is a site suitable for the temporary or permanent residence of a single person or of a family for the prevention or cure of disease or illness.

(5) A "convalescent site" is a site suitable for residence of a single person or family for the purpose of recuperation from a disease or illness.

(6) A "recreational site" is a site chiefly suitable for noncommercial outdoor recreation.

(7) A "business site" is a site suitable for some form of commercial enterprise.

§ 257.3 *Policy.* (a) It is the policy of the Secretary in the administration of the act of June 1, 1938, to promote the beneficial utilization of the public lands subject to the terms thereof, and at the same time to safeguard the public interest in the lands. To this end offers to lease sites will be considered in the light of their effect upon the conservation of natural resources and upon the welfare not only of the offerors themselves but of the communities or areas in which they propose to settle. Leases will not be awarded, for example, which would lead to private ownership or control of scenic attractions, or water resources, or other areas that should be kept open to public use. Nor will isolated or scattered settlement be permitted which would impose heavy burdens upon State or local governments for roads, schools, and police, health, and fire protection. Types of settlements or businesses which might create "eyesores" along public highways and parkways will be guarded against, and lands will not be leased or sold under the act if such action would unreasonably interfere with the use of water for grazing purposes or unduly impair the protection of watershed areas.

(b) No direct sale of lands will be made under the act. Use and improvement of the land under lease will be required before it may be purchased. Leases of lands which are classified for lease and sale will contain an option permitting the lessee to purchase as provided in § 257.13. Lands classified for lease only will not be sold and the option to purchase clause will not apply to such lands.

§ 257.4 *Classification of land.* (a) The regional administrator may classify lands under the act either on his own motion or upon the filing of an offer to lease, but no lease will be issued or sale authorized prior to classification of the land for such disposal. If the offer is in proper form and the status of the land warrants its consideration for classification under the act, the regional administrator upon receipt of the offer will proceed to make a determination whether ceed to make a determination whether the land should be classified for small tract purposes. If the tract is not suitable for such purposes, the offer to lease will be denied. Where the land has been withdrawn under the statutory powers of the Secretary, the concurrence of the bureau or agency having supervision over the land must be obtained prior to classification.

(b) Land may be classified as suitable for one or more of the types of sites specified in § 257.2, for disposal in tracts of 5 acres or less, depending on the character of the land, and either for lease and

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sale, or for lease only, as specified in the classification order. Lands may be classified for lease and sale where found to be primarily suitable for use in accordance with the act, and where the disposal will not interfere with the use of private lands or with the administration of other Federal lands.

§ 257.5 *Qualifications of lessees; restrictions on lease.* (a) An offer to lease may be made by any person who is a citizen of the United States, or has declared his or her intention to become a citizen, who is 21 years of age or more, or, if under that age, is the head of a family. Unless warranted by special circumstances, where a husband and wife are living together, only one of them may acquire a tract under the act. Employees of the Department of the Interior stationed in Alaska may lease or purchase one tract in Alaska for any purpose under the act except business.

(b) Generally, no person will be permitted to hold, by lease or purchase, more than one tract under the act. Where more than one tract is needed, however, except as otherwise authorized by the regional administrator, each tract must be the subject of a separate offer to lease, complete in itself, and must be accompanied by a satisfactory showing that the allowance of more than one lease is warranted by the circumstances. In each offer to lease the offeror must furnish data sufficient to identify all other offers or applications under the act, if any, filed by him or by any member of his family residing with him. Such data should include the serial number of each such offer or application, the land office where filed, and the name and relationship to offeror.

§ 257.6 *Preference rights of offerors; veterans' preference.* (a) Where an offer to lease a tract is filed prior to the receipt by the manager of notice from the regional administrator that the area is under consideration for small tract classification, a preference right to lease will be accorded the offeror only if the land is thereafter classified for the type of site for which the offer was made, and the offeror agrees to conform his offer to the area and dimensions of the tract as specified in the classification order. An offer to lease, filed subsequent to the receipt by the manager of notice of contemplated classification and prior to issuance of the order, will not be accorded such preference right, but the offer will be retained by the manager pending classification of the land. If the land is classified for disposal under the act, the offer will be considered as a filing during an applicable period for simultaneous filings, provided the offer covers a tract subsequently established by the classification order, or the offeror conforms his offer thereto. If, however, the classification order provides for the use of the special procedure pursuant to § 257.8, such offer will be returned to the offeror, and will be accompanied by Form 4–775, "Drawing Entry Card", where it appears from the offer that the offeror, because of veterans' preference, is entitled to participate in the drawing under the special procedure.

(b) Where, prior to September 27, 1954, land is classified by the regional administrator on his own motion or the classification order embraces additional land, other than the tract for which a preference right is accorded under paragraph (a) of this section, veterans of World War II only and other persons entitled to credit for service of veterans of World War II, in accordance with 43 CFR 181.40 and 181.41, will have a preference right, for 90 days after the effective date of the classification of the lands, to file an offer to lease any of the remaining tracts (sec. 4, act of September 27, 1944; 58 Stat. 748; 43 U. S. C. 282). This preference right does not apply to veterans of World War I or other wars of the United States.

(c) Upon the expiration of the veterans' preference period, referred to in paragraph (b) of this section, any lands in the classification order not disposed of or embraced in pending valid offers to lease will become subject to filing of offers to lease by the public generally.

§ 257.7 *Offer to lease; general procedure.* (a) An offer to lease a site under the act must be filed on Form 4–776, "Offer to Lease and Lease under Small Tract Act", and in conformity with the instructions therein. Copies of the form may be obtained from the manager or the Director; and must be completed and filed in duplicate (in triplicate, if for a business site), with the manager or, if there is no land office in the State, with the Director. The duplicate forms need not be executed under oath but they must be signed by the offeror.[1] The offeror's signature to the offer will also constitute his signature to the lease, when the offer is accepted and executed by the proper officer on behalf of the United States.

(b) If the land has not been classified under this act, the offeror should describe the desired tract, not to exceed five acres, by aliquot parts of a legal subdivision. Where the land has been classified, the offeror should describe the selected tract in accordance with the classification order or plat of survey. In such cases the offeror may also indicate that in the event the selected tract is not available for lease to him, he is willing to accept a lease for any other available tract described in the classification order, which the manager may allocate to him.

§ 257.8 *Special procedure; drawing; notice.* (a) The special procedure provided in this section will be used whenever, in the opinion of the regional administrator or of the Director, a multiplicity of filings by those entitled to claim veterans' preference for service in World War II is anticipated during a simultaneous filing period to be provided for in an order of classification, in excess of the number of tracts available for lease, necessitating a drawing to determine priority. In such event, the classification order will state that the special procedure will be used and that a drawing, limited to persons claiming veterans' preference, will be held; it will indicate the number of small tracts available for lease; it will set out the minimum requirements, including veterans' credit for service in World War II; and other information, including the amount of rental and filing fees to be paid by those successful in the drawing.

(b) Any person who believes he has the necessary qualifications, including veterans' preference, upon request to the manager or the Director designating the classification order by number, may obtain Form 4–775, "Drawing Entry Card." The entry card, completely filled out in accordance with the accompanying instructions, must be returned within the filing period specified in the classification order in order to be eligible to participate in the drawing; it should not be accompanied by any payment of filing fee or rental. An entrant may file only one entry card under each classification order; if more than one card is filed, the entrant shall be ineligible to participate in the drawing or to obtain a lease under the classification order. A drawing of all properly filed cards will be held on the day stated in the classification order to establish an adequate list of eligibles and of alternates to whom will be allocated, in consecutive order, the available tracts.

(c) The successful entrants, to whom a tract has been awarded in the drawing, will be furnished in duplicate Form 4–776, "Offer to Lease and Lease", bearing the description of the tract allocated to the entrant. The forms must be completely filled out, signed and returned accompanied by the proper rental and filing fees and evidence of qualification, within the time allowed by the manager. Where an entrant does not sign the lease forms or he was not qualified to enter the drawing, or for any reason fails to comply with the requirements within the time allowed, the award will be withdrawn and canceled upon the records, and the lot will become available to the alternate next in line of drawing.

(d) Entrants who are unsuccessful in the drawing and to whom no lot was allocated will be informed thereof by the return of their respective drawing-entry cards carying a notation to that effect. After the lots have been awarded and leases executed, the entry cards of the remaining unsuccessful alternates will be returned to them.

§ 257.9 *Filing fee.* Every offer to lease a small tract must be accompanied by a filing fee of $10. No fee is required for the filing of a "Drawing Entry Card" or with an application for purchase, or for renewal of a lease, based on an outstanding lease. The filing fee will be retained in all cases, except where for any reason no lease is awarded to the offeror and no tract is allocated to him in accordance with § 257.7 (b).

§ 257.10 *Rental payment.* (a) If the land has been classified, the offer to lease must also be accompanied by the rental, as specified in the classification order for the entire lease period. If, for any reason, a lease is not issued, the rental payment will be returned.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(b) Unless otherwise provided in the classification order, land classified for lease and sale will be leased for a three-year term with a rental of $15; land classified for lease only, except a business site lease, will be for a five-year term with a rental of $25 for the lease period. For a business site lease for five years the minimum rental is $100 for the lease period; the annual rental, however, will be based on percentages of the gross income as specified in the lease, Form 4–776.

Where the land has not yet been classified, an offer to lease a tract, for other than a business site, must be accompanied by a minimum rental payment of $15, and for a business site, $100. If the rental provided in the subsequent order of classification is greater than the rental payment accompanying the offer to lease, the deficiency must be paid before the lease will issue.

(c) If an offer to lease is not properly executed or is not accompanied by the required filing fee and rental payment or is otherwise irregular, it will not be accepted but will be returned to the offeror in the form received.

§ 257.11 *Issuance of lease.* The manager may issue leases for not to exceed five years, upon lands classified for lease only, and for not to exceed three years upon lands classified for lease and sale: *Provided,* (a) The offeror upon issuance of the lease will have only one tract under the act, and (b) the offer covers a tract established by the classification order. All other leases will be issued by the regional administrator. The lease, part of Form 4–776, will issue and be valid when executed by the proper officer on behalf of the United States. The lease will contain provisions relating to the improvements to be placed on the lands and such other conditions of occupancy as are set forth in the order of classification, including an appropriate set-back of the improvements from the boundaries of the leased tract. Plans for improvements may be submitted to the regional administrator for approval in advance of construction.

§ 257.12 *Assignment of lease; subleasing not permitted.* (a) The manager may act upon and approve assignments of leases, except that where the assignee already holds a small tract under the act, approval of the assignment will be in the discretion of the regional administrator. No assignment will be recognized unless and until approved by the appropriate officer. An assignment will not be approved until substantial improvements, suitable to the type of use for which the lease issued, are constructed on the land, except where, upon a showing made by the lessee satisfactory to the regional administrator and corroborated by the statement of at least one witness, the lessee's failure to construct such improvements was caused by unforeseen or unavoidable misfortune.

(b) Proposed assignments of leases must be submitted for approval in duplicate within 90 days from the date of execution. The proposed assignment must contain all the terms and conditions agreed upon by the parties thereto, must be accompanied by the same showing as to qualifications and holdings of the assignee as was required of the lessee in § 257.5, and must be supported by a statement that the assignee agrees to be bound by the provisions of the lease.

(c) The subleasing, in whole or in part, of a tract leased under the act will not be approved, and will constitute a violation of the terms of the lease.

§ 257.13 *Option to purchase; sale; patent.* (a) Lands will not be sold directly under the act but only on the basis of an outstanding lease, containing an applicable option to purchase clause. The option to purchase will apply only to tracts classified for lease and sale, and will afford the lessee or his duly approved successor in interest an opportunity to purchase the tract at or after the expiration of one year from the date the lease issued, provided the improvements required by the lease have been made, and the lessee or his successor in interest has otherwise complied with the terms and conditions of the lease. The option to purchase clause will set forth the appraised value of the unimproved land at the date the lease was issued. The net price at which the land may be purchased will consist of the appraised value plus the cost of survey, if any, necessary to describe the land properly, as provided in § 257.17, and minus an amount equal to the advance rental for each full lease year, if any, subsequent to the filing of the application to purchase.

(b) An application to purchase should be filed with the manager in duplicate on Form 4–775a during the term of the lease but not more than 30 days prior to the expiration of one year from the date of lease issuance, together with a statement as to the cost, type, and character of the improvements constructed on the land.

(c) If a sale is authorized, the applicant will be allowed 60 days from service of notice thereof to pay the amount required. If the purchase price is $100 or less, the entire amount must be paid within the 60-day period. If the price is more than $100 and not more than $200, at least $100 must be paid within the 60-day period and the balance within one year after such payment. If the price is more than $200, at least one-third of the purchase price but not less than $100 must be paid within the 60-day period, and the balance in two equal installments due, respectively, within one and two years after the date of the first payment.

§ 257.14 *Renewal of lease.* (a) An offer for the renewal of a lease must be filed not more than six months or less than 60 days prior to the expiration of the lease, and will accord the lessee or his approved successor in interest a preference right to a new lease only if it is determined that a new lease should issue, and upon such conditions and for such duration as may be fixed.

(b) The manager may act upon offers for renewal and issue new leases only if the land was classified for lease only, and the lessee has constructed satisfactory improvements on the tract appropriate to the type of use for which the lease originally issued, such as a substantial and presentable dwelling suitable for year-round or seasonal use where the land was classified for residence purposes. A lease for land classified for lease only will not be renewed if satisfactory improvements have not been constructed thereon during the lease term.

(c) A lease for land classified for lease and sale is not subject to renewal, except upon a showing satisfactory to the regional administrator, corroborated by the statement of at least one witness, that the lessee's failure to apply for sale of the tract is justified under the circumstances and that non-renewal of the lease would work an extreme hardship on the lessee.

§ 257.15 *Minerals; timber.* (a) Any lease or patent issued under the act will reserve to the United States (1) all deposits of coal, oil, gas, or other minerals, together with the right to prospect for, mine, and remove the same under such regulations as the Secretary may prescribe, and (2) all fissionable source materials, together with the right to prospect for, mine, and remove the same in accordance with the act of August 1, 1946 (60 Stat. 755; 42 U. S. C. 1801–1809). Any minerals subject to the leasing laws in the lands patented or leased under the terms of the act may be disposed of to any qualified person under applicable laws and regulations in force at the time of such disposal. No provision is made at this time to prospect for, mine, or remove the other kinds of minerals that may be found in such lands; and until rules and regulations have been issued, such reserved deposits will not be subject to prospecting or disposition.

(b) A lessee will not be permitted to cut timber from the leased lands without first obtaining permission from the regional administrator. Such permission will not be granted except where the timber is to be cut to clear the land or to make improvements thereon.

§ 257.16 *Rectangular survey; supplemental plats; streets and roads.* (a) The official township plats ordinarily provide the basis for descriptions of tracts, in compact form, in units of 5 acres or aliquot parts thereof. However, as an aid in the identification of the tracts on the ground, frequently it is desirable to subdivide, by survey, the areas classified for administration as small tracts in order that at least one corner of each such tract be marked on the ground. The condition of the original survey and the ease of identification of the individual tracts on the ground are governing factors in deciding whether additional surveys should be made. Such surveys, made simply for the purpose of marking corners of legal subdivisions of the rectangular surveys, are not considered as "special surveys," and the cost thereof will not enter into the selling price of the land. For convenience in description the tracts may be identified by lot numbers, but only by preparation of an official supplemental plat for that purpose by protraction from the subsisting record or based upon supplemental surveys in the field. Such identification will be effective as of the

date of official filing of the plat in the land office.

(b) Where a tract is situated in the fractional portion of a sectional lotting, a supplemental plat may be required to afford a suitable description. The plat will be prepared at the time the lease issues. If the subdivision of the sectional lotting would result in narrow strips or other areas containing less than 2½ acres, not suitable for sale or lease as separate units, such excess areas, in the discretion of the regional administrator, may be included in the adjoining 5-acre tracts.

(c) Unless otherwise provided in the classification order, the leased land will be subject to a right-of-way of not to exceed 33 feet in width along the boundaries of the tract for street and road purposes and for public utilities. The location of such access streets or roads may be indicated on a working copy of the official plat maintained in the land office; or where the land has been classified for lease and sale, the right-of-way may be definitely located prior or subsequent to the issuance of patents; and an appropriate clause reserving the easement for such right-of-way will be incorporated into each lease or patent.

§ 257.17 *Irregular tracts; cost of special survey.* Where, in the opinion of the regional administrator, the rectangular form is not the most desirable plan for development of an area, tracts irregular in form, not in excess of 5 acres each, may be leased or sold in accordance with the regulations in this part. In this matter the regional administrator may initiate action as an administrative measure, or may act upon an offer to lease. An offer to lease such tract should contain a metes and bounds description sufficiently complete to identify the location and boundaries of the land. A special official survey will be required of an irregular tract for purpose of identification and description in the lease or patent. If the action is initiated upon an offer to lease, the offeror will be required to make an advance payment to the manager, equal to the estimated cost of executing the survey, before the field work will be undertaken; he will be credited with any excess payments prior to the issuance of lease or patent. In the case of special surveys as administrative measures the cost of the survey will be considered as a normal expense under the regular appropriation available for surveying the public lands; and when the tracts are sold, the selling price shall not be less than the cost of survey of the particular tract. If there is a group of contiguous or closely associated tracts to be surveyed at one time, the cost of survey will be prorated among the several tracts on an acreage basis.

§ 257.18 *Tracts on unsurveyed land.* Unsurveyed public lands are not subject to lease or sale under the act. An offer filed for such lands will be rejected. However, if desired, the offeror may file a request for the survey of the lands with the regional administrator. The description must be sufficiently complete to identify the location, boundary, and area of the land. There should also be given, if possible, the approximate description or location of the land by section, township and range. A person who requests the survey of an area acquires no preferential right to apply for the land under the act upon the completion of the survey and the official filing of the plat. After the survey is completed and the official plat is placed on record, the surveyed area will be subject to the provisions of the act and an offer to lease may then be filed.

§ 257.19 *Termination or cancellation: removal of improvements.* (a) The lessee may terminate the lease, if he is not in default thereunder, subject to the consent of the regional administrator, by filing a notice of relinquishment of the lease in the proper land office. The manager may cancel any lease where the lessee has failed to comply with any of the terms, covenants, and stipulations of the lease, or to abide by any of the regulations in this part, and such default has continued for 30 days after written notice thereof.

(b) No refund will be made of rental for the unexpired term of a lease relinquished by the lessee or canceled by the manager for cause.

(c) Upon the termination, cancellation, or expiration of a lease, the lessee will have a period of 90 days within which to remove his improvements from the land or to make other disposition thereof; upon his failure to do so within the time allowed, the improvements will become the property of the United States.

§ 257.20 *Appeals.* An appeal pursuant to the rules of practice, Part 221 of this chapter, may be taken from the decision of any subordinate officer of the Bureau of Land Management to the Director, and from the Director's decision to the Secretary.

NOTE: The reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

OSCAR L. CHAPMAN,
Secretary of the Interior.

SEPTEMBER 11, 1950.

[F. R. Doc. 50-8088; Filed, Sept. 15, 1950; 8:45 a. m.]

Interior—Duplicating Section, Washington, D. C. 82337

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1765]

PART 166—ORIGINAL, ADDITIONAL, SECOND, AND ADJOINING FARM HOMESTEADS, AUTHORIZED BY THE GENERAL PROVISIONS OF THE HOMESTEAD LAWS

ADDITIONAL ENTRY FOR LAND CONTIGUOUS TO ORIGINAL ENTRY

In order to show amended requirements made by the act of August 3, 1950 (Public Law 639, 81st Congress), §§ 166.82, 166.84 and 166.85, together with the center head for such sections, are amended to read as follows:

1. The center head is amended to read: "Additional entry for land contiguous to original entry".

2. Sec. 166.82 is amended to read:

§ 166.82 *Statutory authority.* Section 2 of the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213), as amended by the act of August 3, 1950 (Public Law 639, 81st Cong.), authorizes any person who theretofore entered, or might thereafter enter, less than 160 acres of land under the homestead laws who has not perfected the entry, or, if proof has been made, who still owns and occupies the land, to enter other and additional land lying contiguous to the original entry which, with the land first entered and occupied, will not in the aggregate exceed 160 acres. Section 3 of the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213), prohibits the submission of commutation proof of an entry made under that act.

(R. S. 2478; 43 U. S. C. 1201)

3. Section 166.84 is amended to read:

§ 166.84 *Final proof.* Before proof may be submitted as a basis for patent under the act of April 28, 1904, as amended, the entryman must show that he has cultivated an amount equal to one-eighth of the area of the additional entry for at least one year after the additional entry is made and until the submission of final proof thereon. The cultivation may be performed on the original entry, on the additional entry, or on both, but where it is performed on the original entry it must be shown at the time of submission of final proof on the additional entry that the entryman still owns and occupies the original entry, and the cultivation must be in addition to that required and relied upon in making final proof on the original entry. No proof of residence will be required with respect to the additional entry.

The act of April 28, 1904, as amended, provides that final proof for the additional entry may be submitted only at the time of final proof for the original entry, or subsequent thereto, but it must be submitted within five years after the additional entry is made.

(R. S. 2478; 43 U. S. C. 1201)

4. Section 166.85 is amended to read:

§ 166.85 *Cancellation of original entry.* An additional entry under the act of April 28, 1904, as amended, cannot be based on an original entry which has been canceled. If for any reason an original entry is canceled after the additional has been allowed, the additional will be canceled also.

(R. S. 2478; 43 U. S. C. 1201)

OSCAR L. CHAPMAN,
Secretary of the Interior.

SEPTEMBER 11, 1950.

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1766]

HOMESTEADS SUBJECT TO MORTGAGE LOANS

MISCELLANEOUS AMENDMENTS

The following new sections are added to Title 43, in order to show the procedure which should be followed by homestead entrymen including such entrymen in reclamation projects, who wish to obtain loans in accordance with the act of October 19, 1949 (63 Stat. 883, 7 U. S. C. 1946 ed. Supp III secs. 1006a, 1006b) from the Farmers Home Administration of the Department of Agriculture:

Subchapter A—Alaska

PART 65—HOMESTEADS

Sections 65.30 and 65.31 are added, as follows:

HOMESTEADS SUBJECT TO MORTGAGE LOANS

§ 65.30 *Mortgage loans on existing homestead entries; allowance on homestead applications for lands subject to mortgages held by the United States acting through the Secretary of Agriculture; occupancy of the land.* A homestead entryman who desires to secure a loan on an existing homestead entry, or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the act of October 19, 1949 (63 Stat. 883, 7 U. S. C., Supp. III secs. 1006a, 1006b), should proceed in accordance with § 166.102 of this chapter.

§ 65.31 *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

(R. S. 2478, as amended, sec. 1, 30 Stat. 409, as amended; 43 U. S. C. 1201, 48 U. S. C. 371)

PART 66—HOMESTEADS ON COAL, OIL, AND GAS LANDS

Sections 66.11 and 66.12 are added as follows:

§66.11 *Mortgage loans on existing homestead entries allowance of homestead applications for lands subject to mortgages held by the United States acting through the Secretary of Agriculture; occupancy of the land.* A homestead entryman who desires to secure a loan on an existing homestead entry or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the act of October 19, 1949 (63 Stat. 883, 7 U. S. C., Supp. III, secs. 1006a, 1006b), should proceed in accordance with §166.102 of this chapter.

§ 66.12 *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

(R. S. 2478, as amended; 43 U. S. C. 1201)

Subchapter I—Homesteads

PART 166—ORIGINAL, ADDITIONAL, SECOND AND ADJOINING FARM HOMESTEADS, AUTHORIZED BY THE GENERAL PROVISIONS OF THE HOMESTEAD LAWS

Sections 166.102 and 166.103 are added to Part 166.

HOMESTEAD SUBJECT TO MORTGAGE LOANS

§ 166.102 *Mortgage loans on existing homestead entries; allowance of homestead applications for lands subject to mortgages held by the United States acting through the Secretary of Agriculture; occupancy of the land.* (a) A homestead entryman desiring a loan on an existing homestead entry under the act of October 19, 1949 (63 Stat. 883, 7 U. S. C., Supp. III, secs. 1006a, 1006b) should consult the Farmers Home Administration of the Department of Agriculture.

(b) Where a homestead entry subject to a mortgage loan is canceled or relinquished and the loan has not been satisfied, a lien held by the United States acting through the Secretary of Agriculture would attach to the land under the act of October 19, 1949, and such land becomes subject to homestead entry for a period of one year from the date the canceled entry was closed or for one year from the date the entry was relinquished by an applicant who is qualified for an initial loan and who has not exercised his homestead rights. An applicant for such land must first consult the Farmers Home Administration. Such a homestead application must not be filed in the land office until the applicant has been selected and directed to do so by the Farmers Home Administration.

(c) The final arrangements of a mortgage loan between the homestead appli-

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cant and the Farmers Home Administration are not completed until after the homestead application has been allowed as an entry. Upon the allowance of such an application the entryman will be notified not to occupy the land until he has completed the arrangements of the loan and he has been instructed to occupy the land by the Farmers Home Administration.

(d) Decisions canceling homestead entries subject to such mortgage liens for defaults on the mortgage or for noncompliance with the homestead laws will contain a clause allowing 15 days from receipt of notice of the decision within which to respond or to appeal.

(e) If the land in a relinquished or canceled homestead entry subject to a mortgage lien is not entered during the period of one year from the date of relinquishment or one year from the date the canceled homestead entry was closed, the land will become subject to sale by the Farmers Home Administration.

§ 166.103 *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

(R. S. 2478, as amended; 43 U. S. C. 1201)

PART 167—ENLARGED HOMESTEADS

Sections 167.35 and 167.36 are added as follows:

ENLARGED HOMESTEAD SUBJECT TO MORTGAGE LOANS

§ 167.35 *Mortgage loans on existing homestead entries; allowance of homestead applications for lands subject to mortgages held by the United States acting through the Secretary of Agriculture; occupancy of the land.* A homestead entryman who desires to secure a loan on an existing homestead entry, or a homestead applicant who wishes to make a homestead entry for lands in a canceled or relinquished homestead entry subject to a mortgage lien held by the United States acting through the Secretary of Agriculture under the act of October 19, 1949 (63 Stat. 883, 7 U. S. C. Supp. III secs. 1006a, 1006b), should proceed in accordance with § 166.102 of this chapter.

§ 167.36 *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

(R. S. 2478, as amended; 43 U. S. C. 1201)

Subchapter Q—Reclamation and Irrigation

PART 230—RECLAMATION OF ARID LANDS BY THE UNITED STATES

Sections 230.5a and 230.5b are added to Part 230.

§ 230.5a *Mortgage loans on existing reclamation homestead entries; reclamation homestead applications for lands subject to a mortgage lien held by the United States acting through the Secretary of Agriculture; occupancy of the land.* (a) A reclamation homestead entryman or a recognized assignee thereof desiring a loan on an existing reclamation homestead entry under the act of October 19, 1949 (63 Stat. 883, 7 U. S. C., Supp III secs. 1006a, 1006b), should consult the Farmers Home Administration of the Department of Agriculture and the Bureau of Reclamation of the Department of the Interior.

(b) Where a reclamation homestead entry subject to a mortgage loan is canceled or relinquished and the loan has not been satisfied, a lien held by the United States acting through the Secretary of Agriculture would attach to the land under the act of October 19, 1949, and such land would be subject to reclamation homestead entry for a period of one year from the date the canceled entry was closed or for one year from the date the entry was relinquished. An applicant for such land should first consult the Farmers Home Administration and the Bureau of Reclamation. Such a reclamation homestead application must not be filed in the land office until the applicant has been selected by the Farmers Home Administration and the Bureau of Reclamation, and he has been directed by the Farmers Home Administration to file the application.

(c) The final arrangements of a mortgage loan between the homestead applicant and the Farmers Home Administration are not completed until after the reclamation homestead application has been allowed as an entry. Upon the allowance of such an application the entryman will be notified not to occupy the land until he has completed arrangements of the loan and he has been instructed to occupy the land by the Farmers Home Administration.

(d) Decisions canceling reclamation homestead entries subject to such mortgage liens for defaults on the mortgage or for noncompliance with the reclamation or homestead laws will contain a clause allowing 15 days from receipt of notice of the decision within which to respond or to appeal.

(e) If the land in a relinquished or canceled reclamation homestead entry subject to a mortgage lien is not entered during the period of one year from the date of relinquishment or one year from the date the canceled reclamation homestead entry was closed, the land will become subject to disposition by the Secretary of Agriculture.

§ 230.5b *Mortgage liens.* A mortgage lien held by the United States acting through the Secretary of Agriculture shall not extend to mineral deposits in the lands, which have been or may be reserved to the United States pursuant to law.

(Sec. 10, 32 Stat. 390, as amended 43 U. S. C. 373)

OSCAR L. CHAPMAN,
Secretary of the Interior.

SEPTEMBER 12, 1950.

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Obsolete
Replaced by 1785

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1767]

PART 185—GENERAL MINING REGULATIONS

MISCELLANEOUS AMENDMENTS

In order to show new requirements with respect to the appointment of mineral surveyors, and to conform the regulations to existing decentralized procedure, Part 185 is amended as follows:

1. Section 185.50 is amended to read:

§ 185.50 *Appointment of mineral surveyors.* (a) Pursuant to section 2334 of the Revised Statutes (30 U. S. C. 39), each regional admnistrator will appoint as surveyors for the survey of mining claims applicants found to be competent, to the extent needed to meet the demand for that class of work. Each appointee shall qualify as prescribed by the regional administrator and shall furnish a performance bond of not less than $5,000 before entering on duty. Each mineral surveyor shall be eligible to survey mining claims in the States within the region in which he is appointed and in adjoining States. Each regional administrator shall maintain a register showing the names and addresses of mineral surveyors appointed for the region and eligible for the survey of mining claims. The regional administrator shall furnish the regional administrator of each adjoining region with a copy of such register, and shall advise them of any changes therein.

(b) A mineral claimant may employ any United States mineral surveyor qualified as indicated in paragraph (a) of this section to make the survey of his claim. All expenses of the survey of mining claims and the publication of the required notices of application for patent are to be borne by the mining claimants.

(R. S. 2478, 43 U. S. C. 1201)

2. Section 185.94 is amended to read:

§ 185.94 *Segregation of mineral from non-mineral land.* Where a survey is necessary to set apart mineral from non-mineral land, the appropriate regional administrator will have special instructions prepared outlining the procedure to be followed in the required survey. The survey shall not be begun until such special instructions have been approved by the Director, Bureau of Land Management, which approval will constitute formal authorization therefor. The survey will be executed at the expense of the United States. Upon acceptance of the survey by the Director, the triplicate copy of the plat thereof will be filed in the proper land office as a basis for the disposal of the non-mineral land shown thereon. The land office will, in all cases, serve notice on the mineral claimants of the issuance of the authority for the survey.[21]

(R. S. 2478; 43 U. S. C. 1201)

3. Section 185.97 is amended to read:

§ 185.97 *Non-mineral entry of residue of subdivisions invaded by mining claims.* (a) The manager will accept and approve any application (if otherwise regular), to make a non-mineral entry of the residue of any original lot or legal subdivision which is invaded by mining claims if the tract has already been lotted to exclude such claims. If not so lotted, and if the original lot or legal subdivision is invaded by patented mining claims, or by mining claims covered by pending applications for patent which the non-mineral applicant does not desire to contest, or by approved mining claims of established mineral character, the manager will accept and approve the application (if otherwise regular), exclusive of the conflict with the mining claims. Before authorizing publication the manager will advise the regional administrator as to the need for a plat to segregate the mineral from the non-mineral land. If no objection appears, the regional administrator will direct the regional chief, Division of Cadastral Engineering, to prepare the necessary supplemental plat of the section or sections involved to designate the non-mineral portion of each original lot or subdivision by appropriate lot number and area, specifying the particular mining claims or portions thereof which should be segregated.

(b) The manager will allow no non-mineral application for any portion of an original lot or 40-acre legal subdivision, where the tract has not been lotted to show the reduced area by reason of approved surveys of mining claims for which applications for patent have not been filed, until the non-mineral applicant submits a satisfactory showing that such surveyed claims are in fact mineral in character. Applications to have lands which are asserted to be mineral, or mining locations, segregated by survey with a view to the non-mineral appropriation of the remainder, will be made to the manager of the land office. Such applications must be supported by a written statement of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required, that the land sought to be segregated as mineral is in fact mineral in character.

(R. S. 2478; 43 U. S. C. 1201)

OSCAR L. CHAPMAN,
Secretary of the Interior.

SEPTEMBER 22, 1950.

[F. R. Doc 50-8449; Filed, Sept 27, 1950; 8:45 a. m.]

[21] Where, in stock-raising homestead entries, it has been satisfactorily established that there are existent prior unpatented mining claims, the segregation of the latter is not strictly a segregation of mineral from non-mineral land, but rather the procedure adopted to define the boundaries of and provide a legal description for that part of the homestead entry which is not within the segregated mining claims.

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1768]

PART 181—SOLDIERS' AND SAILORS' HOMESTEAD RIGHTS

RESIDENCE AND CULTIVATION REQUIRED ON HOMESTEADS

Obsolete See Circ 1850

Replaced by Circular 1981 (11/58)

The existing text of § 181.39 is designated as paragraph (a) of that section and a new paragraph is added as paragraph (b). The section as amended reads:

§ 181.39 *Residence and cultivation required on homesteads.* (a) Before satisfactory final proof may be submitted on a homestead entry, a veteran will be required to comply with the homestead laws for a period of at least one year and for such additional period as, added to the term of the military or naval service, equals three years. During this period a veteran with 19 months' or more military service will be required to reside on the land at least seven months during the first entry year; with more than 12 and less than 19 months, he must reside on the land seven months during the first entry year and such part of the second year, as added to his excess over 12 months' service, will equal seven months, and must cultivate one-sixteenth of the area the second year; with seven and not more than 12 months, he must reside upon the land seven months during each of the first and second entry years, and cultivate one-sixteenth of the area the second year; with 90 days and less than seven months, he must reside upon the land seven months during each year for the first and second years, and such part of the third as, added to his service, will equal seven months, and cultivate one-sixteenth of the area the second year and one-eighth the third year; and with less than 90 days' service, will receive no credit therefor in lieu of residence and cultivation. A veteran will not be required to cultivate the land after he has met the requirements as set forth above: *Provided,* He promptly files notice of intention to submit proof. If, however, he delays the submission of proof beyond the period for which residence is required, the cultivation necessary during each annual cultivable season elapsing or reached before the submission of proof must be shown. He may apply for and receive a reduction in the area required to be cultivated, the same as other entrymen. In computing the required periods of residence, set forth above, there has been excluded the five months' absence each year from the land which may be taken by a homestead entryman in not more than two periods during each year after establishing residence, by giving notice to the manager as set forth in § 166.38 of this chapter. The veteran must have a habitable house on the land at the date of submitting homestead proof.

(b) As the only requirement prescribed by section 2 of the act of April 28, 1904 (33 Stat. 527, 43 U. S. C. 213) as amended by the act of August 3, 1950 (Public Law 639, 81st Cong.) for the submission of final proof on an additional homestead entry for less than 160 acres subject to that section is the cultivation of the prescribed area for one year, as set forth in § 166.84 of this chapter (Circ. 1765, September 11, 1950, 15 F. R. 6221), and as section 1 of the act of September 27, 1944 (58 Stat. 747) as amended by the act of May 31, 1947 (61 Stat. 123, 43 U. S. C., Sup. III, 279), granting to veterans of World War II credit for military or naval service not exceeding two years in connection with homestead entries, requires a veteran to meet the requirements of the homestead laws for a period of at least one year, a veteran in order to submit satisfactory final proof on such an additional homestead entry must meet the requirements of cultivation for the additional entry for a period of at least one year. Section 2 of the act of April 28, 1904, as amended, requires that cultivation of the land be continued until final proof is submitted. A qualified veteran or other person entitled to credit for military service who does not submit proof upon the expiration of the one year period may be allowed credit for the period of military service, not exceeding two years, for any subsequent required period of cultivation.

(Sec. 5, 58 Stat. 748, as amended; 43 U. S. C., and Sup., 283)

C. GIRARD DAVIDSON,
Acting Secretary of the Interior.

OCTOBER 12, 1950.

[F. R. Doc. 50-9154; Filed, Oct. 17, 1950; 8:45 a. m.]

Published in Federal Register Vol. 15, No. 202, of October 18, 1950, page 6963

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1750]

PART 191—SURVEYS AND SURVEYORS: HOMESTEAD ENTRIES

RESIDENCE AND CULTIVATION REQUIRED ON HOMESTEADS

The existing text of § 191.39 is designated as paragraph (a) of that section and a new paragraph is added as paragraph (b). The section as amended reads:

§ 191.39 Residence and cultivation required on homesteads. (a) Before satisfactory final proof may be submitted on a homestead entry a veteran will be required to comply with the homestead laws for a period of at least one year and for such additional period as, added to the term of his military or naval service, equals three years. During this period a veteran with 12 months or more military service will be required to reside on the land at least seven months during the first entry year; with more than 12 and less than 18 months, he must reside on the land seven months during the first entry year and such part of the second year, as added to his excess over 12 months service, will equal seven months, and must cultivate one-sixteenth of the area the second year; with seven and not more than 12 months, he must reside upon the land seven months during each of the first and second entry years, and cultivate one-sixteenth of the area the second year; with 90 days and less than seven months, he must reside upon the land seven months during each year for the first and second years, and such part of the third as, added to his service, will equal seven months, and cultivate one-sixteenth of the area the second year and one-eighth the third year; and with less than 90 days' service, will receive no credit therefor in lieu of residence and cultivation. A veteran will not be required to cultivate the land after he has met the requirements as set forth above: *Provided*, He promptly files notice of intention to submit proof. It, however, he delays the submission of proof beyond the period for which residence is required, the cultivation necessary during each annual cultivation season elapsing or reached before the submission of proof must be shown. He may apply for and receive a reduction in the area required to be cultivated, the same as other entrymen. In computing the required periods of residence, set forth above, there has been excluded the five months' absence each year from the land which may be taken by a homestead entryman in not more than two periods during each year after establishing residence, by giving notice to the manager as set forth in § 185.39 of this chapter. The veteran must have a habitable house on the land at the date of submitting homestead proof.

(b) As the only requirement prescribed by section 2 of the act of April 28, 1908 (33 Stat. 527, 43 U. S. C. 218) as amended by the act of August 3, 1950 (Public Law 659, 81st Cong.) for the submission of final proof on an additional homestead entry for less than 160 acres subject to that section is the cultivation of the prescribed area for one year, as set forth in § 185.84 of this chapter (Circ. 1776, September 11, 1950, 15 F. R. 6221), and as section 1 of the act of September 27, 1944 (58 Stat. 747) as amended by the act of May 21, 1947 (61 Stat. 123, 43 U. S. C., Sup. III, 279), granting to veterans of World War II credit for military or naval service not exceeding two years in connection with homestead entries, requires a veteran to meet the requirements of the homestead laws for a period of at least one year, a veteran in order to submit satisfactory final proof on such an additional homestead entry must meet the requirements of cultivation for the additional entry for a period of at least one year. Section 2 of the act of April 28, 1908, as amended, requires that cultivation of the land be continued until final proof is submitted. A qualified veteran or other person entitled to credit for military service who does not submit proof upon the completion of the one year period may be allowed credit for the period of military service, not exceeding two years, for any subsequent required period of cultivation.

(Sec. 2, 33 Stat. 527, as amended; 43 U. S. C. and Sup. 218)

C. DARRAH DAVIDSON,
Acting Secretary
of the Interior.

OCTOBER 12, 1950.

[F. R. Doc. 50-9196; Filed, Oct. 17, 1950; 8:52 a. m.]

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1950, page 6963

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1769]

PART 192—OIL AND GAS LEASES

LIMITATION OF OVERRIDING ROYALTIES

Section 192.83 is hereby amended to read as follows:

§ 192.83 *Limitation of overriding royalties.* Any agreement to create overriding royalties or payments out of the production of any lease which, when added to overriding royalties or payments out of production previously created and to the royalty payable to the United States, aggregate in excess of 17½ percent shall be deemed a violation of the terms of the lease unless such agreement expressly provides that the obligation to pay such excess overriding royalty or payments out of production shall be suspended when the average production per well per day averaged on the monthly basis is (a) as to oil, 15 barrels or less and (b) as to gas, 500,000 cubic feet or less. The limitations in this section will apply separately to any zone or portion of a lease segregated for computing Government royalty.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

OCTOBER 13, 1950.

DALE E. DOTY,
Acting Secretary of the Interior.

[F. R. Doc. 50-9209; Filed, Oct. 18, 1950; 8:46 a. m.]

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1950, page 6989

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1793]

Part 192—OIL AND GAS LEASES

LIMITATION OF OVERRIDING ROYALTIES

Section 192.82 is hereby amended to read as follows:

§ 192.82 Limitation of overriding royalties. Any agreement to create overriding royalties or payments out of the production of any lease which, when added to overriding royalties or payments out of production previously created and to the royalty payable to the United States, aggregate in excess of 17½ percent shall be deemed a violation of the terms of the lease unless such agreement expressly provides that the obligation to pay such excess overriding royalty or payments out of production shall be suspended when the average production per well per day averaged on the monthly basis is (a) as to oil, 15 barrels or less and (b) as to gas, 500,000 cubic feet or less. The limitations in this section will apply separately to any zone or portion of a lease segregated for computing government royalty.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

October 13, 1950.

DOUG E. JOHN,
Acting Secretary of the Interior.

[F. R. Doc. 50-9209; Filed, Oct. 16, 1950; 8:46 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1770]

See 1862, 1758, 1802, 1824

PART 259—DISPOSAL OF MATERIALS

MISCELLANEOUS AMENDMENTS

Replaced by Circular 1921 (11/58)

Sections 259.1 (a), 259.2 (d), and 259.16 are amended, as shown below, in view of the provisions of Public Law No. 744, 81st Congress, 2d Session, approved August 31, 1950, providing for the disposal of sand, stone, gravel, and vegetative materials located below high-water mark of navigable waters of the Territory of Alaska; and §§ 259.4, 259.7 (b) and (c), 259.10 (a) and 259.20 are amended, as shown below, to provide for the disposal of all of one type or kind of material on or in specific tracts of land by contract the terms of which shall be for the duration of the production of such material.

1. Section 259.1 (a) is amended to read:

§ 259.1 *Statutory authority.* (a) The act of July 31, 1947 (61 Stat. 681; 43 U. S. C. 1185) authorizes the disposal of materials, including but not limited to sand, stone, gravel, yucca, manzanita, mesquite, cactus, common clay, and timber or other forest products, on public lands of the United States, if the disposal is not otherwise expressly authorized by laws of the Unted States, including the United States mining laws, and is not expressly prohibited by laws of the United States, nor detrimental to the public interests. The act of August 31, 1950 (Public Law No. 744, 81st Congress, 2d Sess.) added to the act of July 31, 1947, a section 4 authorizing the disposal of sand, stone, gravel, and vegetative materials located below high-water mark of navigable waters of the Territory of Alaska.

2. Section 259.2 (d) is amended to read:

§ 259.2 *Definitions.* * * *

(d) "The act" means the act of July 31, 1947 (61 Stat. 681; 43 U. S. C. 1185–1188, as amended).

3. Section 259.4 is amended by adding a new paragraph designated (e), to read:

§ 259.4 *Sale and appraisal.* * * *

(e) Whenever in his judgment it is in the public interest to do so, the regional administrator may authorize the sale of all of one type or kind of nonvegetative material on or in specific tracts of land where the quantity of such material cannot be determined prior to extraction or removal thereof. The contract of sale shall set forth the price per unit payable to the United States, the minimum annual payment and such other terms as the regional administrator shall consider advisable. All such sales shall be made competitively to the highest qualified bidder at public auction or under sealed bids, after publication and posting of notice as provided in § 259.7.

4. Section 259.7 (b) and (c) is amended to read:

§ 259.7 *Publication and posting.* * * *

(b) The notice of sale shall set forth the name and post-office address of the applicant, if any, the description of the land, the nature, quantities and location of the materials to be sold, the appraised price thereof, the minimum bond and minimum installment payments which will be required, the scale or measurement unit upon which the sale will be based, the minimum deposit acceptable, the method of bidding, the place where full information relating to the sale and a copy of the regulations in this part may be obtained, and, where applicable, the slash disposal requirements and forest practices prescribed for the sale. The notice shall also specify the time for the close of receipt of sealed bids which also shall be the time for the opening thereof; or, if the material is to be disposed of by auction, the notice shall set the time and place for the auction. It shall also state that bids of a sum less than the appraised price of the materials will not be considered and that the right to reject any or all bids is reserved. The notice

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shall also state that if the high bid is rejected for proper cause, or if the contract is not executed by the highest bidder, the contract may be awarded to the next highest qualified bidder and that deposits made with the bids will be returned to the unsuccessful bidders after award of the contract. In addition to the pertinent foregoing requirements, the notice of sale for a sale under § 259.4 (e) shall set forth the term of the contract, price per unit and the minimum annual payment. In all timber sales from public lands within the O. and C. land grant limits in Oregon, the notice shall state that the timber shall be given primary manufacture within a designated marketing area. All bidders are warned against violation of the provisions of 18 U. S. C. 1860, prohibiting unlawful combination or intimidation of bidders.

(c) Any of the requirements specified in paragraph (b) of this section may be omitted from the notice of sale to be published in a newspaper, provided that such notice contains at least the information required to be set forth in Form 4–060. For sales under § 259.4 (e) Form 4–060 should be properly amended to contain the information required by that part of paragraph (b) of this section relating specifically to such sales.

5. Section 259.10 (a) is amended to read:

§ 259.10 *Contracts.* (a) The Bureau of Land Management shall prepare contracts on Form 4–054 for sales of over $1,000 and on Form 4–058 for sales of $1,000 or less. Contracts for the disposal of all of a single type or kind of nonvegetative material, as authorized by § 259.4 (e) shall be prepared on Form 4–1164 and shall be signed on behalf of the United States by the regional administrator or the acting regional administrator.

6. The existing text of § 259.16 is designated as paragraph (a) of that section and a new paragraph is added as paragraph (b). The section as amended reads:

§ 259.16 *Termination of contracts.* (a) The signing officer may terminate a contract at the request of the purchaser upon satisfactory showing that the termination will not adversely affect the public interest, and that all charges due the Government thereunder have been paid.

(b) Any contract, unexecuted in whole or in part, for the disposal under section 4 of the act of materials from lands, title to which is transferred to a future State upon its admission to the Union, and which is situated within its boundaries, may be terminated or adopted by such State in such manner as the State may by law determine.

7. The existing text of § 259.20 is designated as paragraph (a) of that section and a new paragraph is added as paragraph (b). The section as amended reads:

§ 259.20 *Duration of contract.* (a) The maximum periods which shall be allowed after the date of the contract, for the severance or extraction of the materials purchased, except as the contract may be extended in accordance with § 259.17, shall be as follows: For sales of $1,000 or less, one year; for sales of over $1,000 but not exceeding $10,000, two years; for sales over $10,000 but not exceeding $100,000, five years; and for sales exceeding $100,000, such term as shall be fixed in the notice of sale by the signing officer, except that in any contract for the sale of timber from an intermediate cutting the term of such contract may be fixed by the signing officer in his discretion in the notice of sale. The Regional Administrator may provide that contracts shall have maximum periods longer than those prescribed above in the case of timber sales in Alaska under this part, where in his opinion the allowance of such longer periods will promote the development of the Territory, and such period shall be stated in the notice of sale where one is required.

(b) Contracts on Form 4–1164 shall be for a term of not more than 5 years, as fixed in the notice of sale, and for so long thereafter as the material subject to the contract is being produced or removed in paying quantities.

(Sec. 1, 61 Stat. 681; 43 U. S. C. sup., 1185)

OSCAR L. CHAPMAN,
Secretary of the Interior.

NOVEMBER 9, 1950.

[F. R. Doc. 50–10196; Filed, Nov. 14, 1950; 8:47 a m.]

Still in effect 6/25/58

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Circular No. 1771

Replaced by 1916 (11/58)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

SPECIAL LAND-USE PERMITS FOR PUBLIC LANDS WITHIN OR OUTSIDE OF GRAZING DISTRICTS

Regulations contained in Part 258, Title 43
of the Code of Federal Regulations

(Reprint, November 1950)

Contents

Authority Sec. 258.1 to 258.16 issued under R. S. 2478; 43 U.S.C. 1201.

Section 258.1 Statutory authority. Authority to issue special land-use permits for public lands within or outside of grazing districts for purposes other than grazing is found in R. S. 453 (43 U. S. C. 2), which provides that the Director, Bureau of Land Management, shall perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise regarding such public lands.

Sec. 258.2 Policy; use of lands. (a) It is the policy of the Secretary of the Interior, in the administration of the public lands within or outside of grazing districts, to permit, where practical, the beneficial use thereof for special purposes not specifically provided for by the existing public land laws. 1/ Permits for such special use will not be issued, however, in any case where the provisions of the existing public land laws may be invoked. For example, they will not be issued to authorize the use of the public lands for home, cabin, camp, health, convalescent, recreational or business sites for which leases may be issued under the act of June 1, 1938 (52 Stat. 609; 43 U. S. C. 682a), or for the development of minerals, or for the securing of rights of way obtainable under existing laws, or for any use directly or indirectly relating to grazing.

(b) The contemplated use must not be in conflict with any Federal or State laws.

(c) An applicant must state in his application the use to which he intends to put the lands, and he will not be permitted to devote them to any other use, unless he secures an additional permit.

Sec. 258.3 Qualifications of applicants. Any person, over 21 years of age, who is a citizen of the United States, or who has declared his intention to become a citizen, or any group or association composed of such persons, or any corporation organized under the laws of the United States or of any State or Territory thereof, authorized to conduct business in the State in which the land involved is situated, or any agency of the Federal Government, or any State or political subdivision thereof, may file such application.

Sec. 258.4 Execution of applications. Applications must be executed in duplicate on Form 4-972. The application must be filed in the proper land office, or if there is no land office in the State, it must be filed in the Bureau of Land Management, Washington, D. C.

1/ The regional administrators are authorized to issue special land-use permits for revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in Oregon, pursuant to 43 CFR, sec. 115.150, special land use permits for acquired lands under the administration of the Bureau of Land Management, under the principles embodied in 43 CFR, Part 258, special land use permits to use areas below the high watermark of navigable waters in Alaska for occupancy purposes, under the principles embodied in 43 CFR, Part 258, subject to rules, regulations, and requirements of the Department of the Army respecting the navigation of such streams and landing and wharf permits on reserved shore space in Alaska, pursuant to 43 CFR, Part 68. (Section 2.74 (b)-(c), Order No. 427, August 16, 1950 (15 F.R. 5642, 5853).

Sec. 258.5 Fees. A fee of $5 will be required with each application, except applications by agencies of the Federal Government and agencies of the States and political subdivisions thereof. The fee paid by an applicant will be returned if the application is rejected.

Sec. 258.6 Occupancy of land prior to permit. An application for special land-use permit will not entitle the applicant to occupy the land prior to the issuance of a permit. Any occupancy of the land prior to the issuance of a permit, or use thereafter except in accordance with the terms of the permit, is hereby prohibited.

Sec. 258.7 Issuance of permits; other actions; protests. (a) The regional administrator for the region in which the land is situated will issue special land-use permits and except as hereinafter provided will take all action required in connection therewith, including the modification, renewal, assignment and cancelation of the permits, and the disposition of protests and conflicting applications. All proceedings will be in accordance with Part 221 of this chapter.

(b) The permit will be issued on Form 4-972a, and will be subject to all of the conditions stated thereon and to such other conditions as may be added thereto.

Sec. 258.8 Term of permit; renewal. A special land-use permit may be issued for a period of not exceeding 5 years and will be revocable for any breach of conditions thereof. It also will be revocable in the discretion of the regional administrator, at any time, upon notice, if in his judgment the lands should be devoted to another use. Upon the expiration of a permit, if the permittee has complied with the provisions thereof, he will be considered the preferred applicant for a new permit under regulations then in force, provided no superior claim to the land has been asserted in the meantime.

Sec. 258.9 Rental. (a) Each permittee will be required to pay to the manager, in advance, the annual rental fixed by the permit, which shall be based upon the value of the land for the use to which it is to be put. The annual rental may be adjusted from year to year, in the discretion of the regional administrator. In no case, however, will the minimum rental charge be fixed at less than $5 per annum.

(b) Special land-use permits applied for by agencies of the Federal Government and agencies of States and political subdivisions thereof may, in the discretion of the regional administrator, be issued without rental charge. 2/

2/ Every such permit issued to a Federal agency or to a State agency or political subdivision shall be restricted to the smallest area needed for the proposed use. Not more than 50,000 acres may be included in such a permit, and no such permit may be issued under this authority where a withdrawal of a class which the regional administrators are not authorized to make is requested.
(Section 2.74 (f), Order No. 427, August 16, 1950 (15 F.R. 5642, 5853).

Sec. 258.10 Permit area; description and marking of land. A special land-use permit will not be issued for more than 5 acres, except upon a showing of special need, satisfactory to the regional administrator. The land must be vacant public land, or public land withdrawn or reserved under authority of the Secretary of the Interior, surveyed or unsurveyed. If surveyed, the land must be described in the application by legal subdivisions of the public land surveys. The smallest legal subdivision in a quarter-quarter section or fractional lot that will be considered is 2-1/2 acres. Where, however, a fractional lot contains less than 2-1/2 acres, a permit may be issued for the entire lot. If unsurveyed, the land must be described by metes and bounds, with substantial monuments at each corner and with a tie to a nearby corner of the public land surveys, if feasible. If such tie is not feasible, the location must be otherwise identified with certainty, preferably with reference to prominent topographic or cultural features. The land must be taken in rectangular form, if at all practicable.

Sec. 258.11 Land not segregated. A special land-use permit will be subject to valid adverse claims theretofore or thereafter acquired and to the filing of applications and the acquisition of rights by others, as follows:

(a) Applications and selections may be made under nonmineral laws, subject to the revocation of the permit.

(b) The mineral contents in the land shall at all times be subject to prospecting, location, developing, mining, entering, leasing, or patenting under the provisions of the applicable general mining laws or mineral leasing laws.

(c) The special land-use permit shall be subject to any permit issued under the act of June 8, 1906 (34 Stat. 225; 16 U. S. C. 431-433); to explore for objects of antiquity on the public lands.

(d) The special land-use permit shall not restrict the acquisition by grant or permit of rights of way under existing laws.

Sec. 258.12 Timber. A special land-use permit will not entitle an applicant to cut and remove timber from the land. If he wishes to cut and remove the timber, application therefor must be made in accordance with the governing laws and regulations.

Sec. 258.13 Special stipulations in permit. If it is found that unusual conditions or the protection of the public interests require the insertion of special stipulations in the permit, the applicant will be advised thereof prior to its issuance.

Sec. 258.14 Assignment of permit. A permittee will not be allowed to assign a permit or any interest therein without the approval of the regional administrator. Proposed assignments must be supported by a statement signed by the assignee agreeing to be bound by the provisions of the permit, if the assignment is approved, and a showing that the assignee possesses the qualifications set out in section 258.3.

Sec. 258.15 Removal of improvements. The permittee, if all rental charges due the Government have been paid, may remove within such reasonable time as may be allowed by the regional administrator after the revocation or expiration of a permit, all structures which have been placed upon the premises by him or his assignor. If the permittee fails to make payment of the rental charges within 30 days from receipt of notice requiring payment, or upon revocation or expiration of the permit fails to remove the structures within the time required by the regional administrator, structures will become the property of the United States.

Sec. 258.16 Refund. No refund of rentals properly paid will be made because of the revocation of the permit, at any time, or because of interference with or prevention of the exercise of the privileges conferred by the permit by mineral prospectors, locators, licensees, permittees, lessees, or patentees, or by permittees under the act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431-433), or by grantees or permittees of rights of way under existing laws.

Interior--Duplicating Section, Washington, D.C.

85950

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1772]

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Obsolete Replaced by 1781

PART 191—GENERAL REGULATIONS APPLICABLE TO MINERAL PERMITS, LEASES AND LICENSES

MISCELLANEOUS AMENDMENTS

The following amendments of certain sections of Part 191 are made necessary by a change from the present practice of issuing a noncompetitive lease on a form separate and distinct from the lease application, to a procedure by which a standardized noncompetitive oil and gas lease offer form becomes a lease when signed on behalf of the United States. The change will eliminate some of the steps now necessary to issue a noncompetitive lease.

Part 191 is amended as follows, effective 60 days after date of issuance hereof by the Secretary of the Interior:

1. Section 191.6 is amended to read:

§ 191.6 *Special stipulations for lands in national forests or reclamation projects.* Offerors for noncompetitive oil and gas leases and applicants for permits, leases, and licenses for lands in national forests will be required to consent to the inclusion therein of the stipulation on Form 4-216. Where the land has been withdrawn for reclamation purposes the applicant or offeror may be required to consent to the inclusion of a stipulation on Form 4-467 if the lands are potentially irrigable, or Form 4-467 (a) if the lands are within the flow limits of a reservoir site, or Form 4-467 (b) if the lands are within the drainage area of a constructed reservoir. Other conditions may be imposed, if deemed necessary, to protect land withdrawn for reclamation purposes.

2. Section 191.10 is amended to read:

§ 191.10 *Simultaneous applications or offers for lease.* Where applications or offers received by mail or filed over the counter at the same time are in conflict, the right of priority of filing will be determined by public drawing in the manner provided in § 295.8 (b) of this chapter. Notice of the conflict and of the date and hour of the drawing shall be mailed to each applicant or offeror five days prior to such date, and the manager will post notice showing the date and hour of the drawing in a conspicuous place in his office for a period of five days prior to such date.

3. Section 191.11 is amended to read:

§ 191.11 *Filing fees.* Offers for noncompetitive oil and gas leases and all applications for prospecting permits, licenses, or noncompetitive leases, excepting phosphate lease applications, must be accompanied by a filing fee of $10 for each application or offer. Such a fee will be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

4. Section 191.13 is amended to read:

§ 191.13 *Payments of rentals and royalties.* Unless otherwise directed by the Secretary, rentals and royalties under all leases and permits issued under the act shall be paid to the manager of the land office for the land district in which the leased lands are situated. In States where there are no land offices, the payments required with applications and offers shall be made to the Director, Bureau of Land Management. In such States all payments which subsequently become due must be made to the proper regional administrator. All remittances shall be made payable to the Treasurer of the United States.

(Sec. 32, 41 Stat. 450, sec. 1, 44 Stat. 301, as amended; 30 U. S. C. 189, 271. Interpret or apply sec. 5, 44 Stat. 1058, as amended; 30 U. S. C. 285)

OSCAR L. CHAPMAN,
Secretary of the Interior.

NOVEMBER 29, 1950.

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Interior--Duplicating Section, Washington, D. C. 8:537

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

(Circular 1773)

PART 191—GENERAL REGULATIONS APPLICABLE TO MINERAL PERMITS, LEASES AND LICENSES

MISCELLANEOUS AMENDMENTS

The following amendments of certain sections of Part 191 are made necessary by a change from the present practice of issuing a noncompetitive lease on a form separate and distinct from the lease application, to a procedure by which a standardized noncompetitive oil and gas lease form becomes a lease when signed on behalf of the United States. The change will eliminate some of the steps now necessary to issue a noncompetitive lease.

Part 191 is amended as follows, effective 30 days after date of issuance hereof by the Secretary of the Interior:

1. Section 191.6 is amended to read:

§ 191.6 Special stipulations for lands in national forests or reclamation projects. Offers for noncompetitive oil and gas leases and applications for permits, leases, and licenses for lands in national forests will be required to conform to the inclusion therein of the stipulation on Form 4-216. Where the land has been withdrawn for reclamation purposes the applicant or offeror may be required to consent to the inclusion of a stipulation on Form 4-467 if the lands are potentially irrigable, or Form 4-467 (a) if the lands are within the flow lines of a reservoir site, or Form 4-467 (c) if the lands are within the drainage area of a constructed reservoir. Other conditions may be imposed, if deemed necessary, to protect land withdrawn for reclamation purposes.

2. Section 191.10 is amended to read:

§ 191.10 Simultaneous applications or offers for same. Where applications or offers received by mail or filed over the counter at the same time are in conflict, the right of priority of filing will be determined by public drawing in the manner provided in § 382.3-(b) of this chapter. Notice of the conflict and of the date and hour of the drawing shall be mailed to each applicant or offeror five days prior to such date.

3. Section 191.11 is amended to read:

§ 191.11 Filing fee. Offers for noncompetitive oil and gas leases and all applications for prospecting permits, licenses, or noncompetitive leases, containing prospecting leases, applications must be accompanied by a filing fee of $10 for each application or offer. Such a fee will be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

4. Section 191.13 is amended to read:

§ 191.13 Payments of rentals and royalties. Unless otherwise directed by the Secretary, rentals and royalties under all leases and permits issued under the act shall be paid to the manager of the land office for the land district in which the leased lands are situated. In States where there are no land offices, the payments required with applications and offers shall be made to the Director, Bureau of Land Management. In such States all payments which subsequently become due must be made to the proper regional administrator. All remittances shall be made payable to the Treasurer of the United States.

(Sec. 32, 41 Stat. 450, sec. 1, 44 Stat. 901; as amended; 30 U. S. C. 188, 271. Interpreting or apply sec. 5, 44 Stat. 1024, as amended; 30 U. S. C. 285)

OSCAR L. CHAPMAN,
Secretary of the Interior.

NOVEMBER 20, 1950.

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Interior--Duplicating Section, Washington, D.C. 8-1-77

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1773]

PART 192—OIL AND GAS LEASES

MISCELLANEOUS AMENDMENTS

The following amendments and revision of certain sections of Part 192 are made necessary by a change from the present practice of issuing a noncompetitive lease on a form separate and distinct from the lease application, to a procedure by which a standardized noncompetitive oil and gas lease offer form becomes a lease when signed on behalf of the United States. The change will eliminate some of the steps now necessary to issue a noncompetitive lease.

Part 192 is amended as follows, effective 60 days after date of issuance hereof by the Secretary of the Interior:

1. Paragraph (c) of § 192.3 is amended to read:

(c) No lease will be issued and no transfer will be approved until it has been shown pursuant to the requirements of § 192.42 (e) (4) that the lessee or transferee is entitled to hold the acreage. Any party found to hold or control accountable acreage computed in accordance with the principles above set forth in excess of the prescribed limitations shall be given thirty days within which to file proof of the reduction of his holdings or control so as to conform with the prescribed limitation.

2. Paragraphs (b), (c), and (f) of § 192.4 are amended to read:

(b) No such option shall be taken for more than two years without the prior approval of the Secretary of the Interior, except that an option hereafter taken on a lease application or offer may be for the period of time until issuance of the lease and two years thereafter. Where it is sought to obtain options for periods in excess of those provided in the preceding sentence, an application should be filed with the Director, Bureau of Land Management, accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application by the Secretary.

(c) Within the meaning of this section, options may be taken only on lands embraced in leases and offers or applications for leases and the acreage included in any such option taken upon an application or offer for a lease shall be chargeable from and after the date of such option.

(f) Each optionee must file with the Director, Bureau of Land Management, within 90 days after December 31 and June 30 of each year, a statement showing as of the prior December 31 and June 30, respectively, (1) name of optioner and serial number of lease, application or offer for lease subject to the option, (2) date and expiration date of each option, (3) number of acres covered by each option, and (4) aggregate number of options held in each state and total acreage thereof.

3. Section 192.5 is amended to read:

§ 192.5 *Lands within one mile of naval petroleum or helium reserves.* No oil and gas lease will be issued for land within one mile of the exterior boundaries of a naval petroleum or a helium reserve, unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the Secretary, after consultation with the head of the agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

4. Section 192.40 is amended to read:

§ 192.40 *Classes and term.* All lands subject to disposition under the act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior. When within the known geologic structure of a producing oil or gas field, such land may be leased only by competitive bidding and in units of not exceeding 640 acres to the highest responsible qualified bidder at a royalty of not less than 12½ per cent. Leases for not to exceed 2,560 acres, except where the rule of approximation applies, within a six-mile square, may be issued for all other land subject to the act to the first qualified offeror at a royalty of 12½ percent. All leases, except those issued as renewals of 20-year leases, will be issued for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities.

5. Section 192.41 is amended to read:

§ 192.41 *Leases for lands wholly or partly within unit areas.* (a) Before issuance of an oil and gas lease for lands within an approved unit agreement, the lease applicant or offeror or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in his lease under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement

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is acceptable, he will be permitted to operate independently but will be required to conform to the terms and provisions of the agreement with respect to such operations.

(b) In case an application or offer for a noncompetitive lease embracing lands partly within and partly without the exterior boundaries of a unitized area is found acceptable, separate leases will be issued, one embracing the lands within the unit area, and one the lands outside of such area.

NONCOMPETITIVE LEASES

6. Section 192.42 is completely revised to read:

§ 192.42 *Offer to lease, and issuance of lease.* (a) To obtain a noncompetitive lease, an offer to accept such a lease must be made on Form 4–1158, "Offer and Lease Form", or on unofficial copies of that form in current use, provided that the copies are exact reproductions on one page of both sides of the official approved one page form, and are without additions, omissions, or other changes or advertising, except that the copies shall include the following statement above the signature of the offeror: "This form is submitted in lieu of official Form 4–1158 and contains all of the provisions thereof as of the date of filing of this offer." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. Form 4–1158, or a valid reproduction of the official form, will also constitute the lease, when signed by the manager of the land office.

(b) Five copies of Form 4–1158, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office, or for land or deposits in states in which there are no land offices, with the Director of the Bureau of Land Management, Washington 25, D. C. If less than five copies are filed, the offeror shall have 15 days from date of the first filing, to file the other required copies, failing in which the offer will be rejected and returned to the offeror with any rental paid and will afford no priority to the offeror. The offer must be filed on a form in effect at the date of filing. For the purpose of this part, an offer will be considered filed when it is received in the proper office during business hours.

(c) The offeror shall mark one of the copies first filed at the top with the word "original". If that is not done, the manager will so mark one copy. If there is any variation in the land descriptions among the five copies, the copy marked "original" shall govern as to the lands covered by the lease.

(d) Each offer must be filled in on a typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney in fact or agent, must describe the lands by legal subdivision, section, township, and range, if the lands are surveyed, and if not surveyed, by a metes and bounds description connected with a corner of the public land surveys by course and distance and must cover only lands entirely within six-mile square. Each offer must be for an area of not more than 2,560 acres, except where the rule of approximation applies.

(e) Each offer, when first filed, shall be accompanied by:

(1) A filing fee of $10 which will be retained as a service charge even though the offer should be rejected or withdrawn either in whole or in part.

(2) Full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision.

(3) Evidence of the authority of the attorney in fact or agent to sign the offer and lease, if the offer is signed by such an attorney or agent in behalf of the offeror.

(4) If the offer is signed by an attorney in fact or agent for an individual, a statement over the offeror's signature with respect to citizenship and that the offeror's direct and indirect interests in oil and gas leases, applications and offers therefor in the same state do not exceed 15,360 chargeable acres.

(f) If the offeror is a corporation, the offer must be accompanied by:

(1) A certified copy of the articles of incorporation, or appropriate reference by land office serial number of the record of the Bureau in which such a copy already has been filed, with statement as to any subsequent amendments.

(2) A statement showing the percentage of each class of the corporation's stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be, or who the corporation has reason to believe are, aliens or who have addresses outside of the United States, indicating which classes of stock have voting rights.

(3) A list of the names and addresses of aliens or stockholders living outside of the United States, if more than 10 percent of the voting stock, or of all of the stock, is owned or controlled by, or on behalf of such persons, the list to show the amount and class of stock held by each, and to the extent known to the corporation, or which can be reasonably ascertained by it, the facts as to the citizenship of each such person.

(4) A separate showing as to the citizenship and holdings of any stockholder owning or controlling at least 20 per cent of the stock of the corporation.

(5) A copy either of the minutes of a meeting of the board of directors or of the bylaws indicating that the officer signing the offer to lease has authority to do so, or in lieu of such a copy, a certificate of the secretary or the assistant secretary of the corporation to that effect, over the corporate seal.

(g) An offer will be rejected and returned to the offeror with any rental paid, and it will confer no priority if it is not filled in and accompanied by the payments and documents required by the regulations in Parts 191 and 192 and the instructions printed on the lease form, except that where a corporation has previously filed in any land office any of the documents required by paragraph (f) of this section a reference to that file may be made in lieu of the document together with a statement as to any changes therein since the document was filed.

(h) An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received by the land office before the lease, an amendment of the lease, Form 4–1163, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(i) The United States will indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease by the signature of the appropriate officer thereof in the space provided. An executed copy of the lease will be mailed to the offeror at the address of record.

(j) If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless before the issuance of the amendment to Form 4–1158 the land office receives a withdrawal of the offer as to such land or an election to receive a separate lease in lieu of an amendment. Such election shall consist of a signed statement by the offeror asking for a separate lease accompanied by a new offer on Form 4–1158 describing the remaining lands in his original offer, executed pursuant to this section. The new offer will have the same priority as the old offer. It need not be accompanied by the filing fee. The rental payment held on the original offer will be applied to the new offer. The rental and the lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued. If a separate lease is issued, it will be dated in accordance with § 192.40a.

(k) A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

(l) If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease or

filed by the deceased, and the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person who as executor or administrator submits the offer and bond form if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(ii) A statement over the signature of each heir or devisee, similar to that required of an offeror under paragraph (e) (4) of this section concerning citizenship and holdings.

(iii) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs or devisees of the deceased.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under paragraph (e) (4) of this section.

7. Section 192.43 is amended to read:

§ 192.43 *Opening of lands to further filings, where a noncompetitive oil and gas lease is canceled or relinquished.* Where a noncompetitive lease is canceled or relinquished and the lands involved are not on the known geologic structure of a producing oil or gas field or are not withdrawn from further leasing, immediately upon the notation of the cancellation or relinquishment on the tract book of the land office or on the tract book of the Bureau of Land Management, if there is no land office in the State, the lands shall be open to further oil and gas lease offers. Offers received in the same mail or over the counter at the same time, will be considered simultaneously filed and priority to the extent of the conflicts between them will be determined by a public drawing in accordance with the procedure prescribed in § 295.8 of this chapter.

8. Section 192.44 is amended to read:

§ 192.44 *Pending applications.* Applications filed prior to the effective date of the regulations in this part will be processed in accordance with the regulations in effect immediately prior to such date and leases will continue to be issued in such cases on Form 4–213, except:

(a) An applicant may, without losing his priority, file Form 4–1158 "Offer and Lease Form" for the land described in his application, pursuant to § 192.42, but without paying the required filing fee, and

(b) From the date of issuance of the regulations in this part until their effective date, Form 4–1158, or unofficial copies thereof, which are exact reproductions on one page[1] of both sides of the official approved one page form, if available, may be filed instead of filing new applications under the prior regulations.

9. Section 192.52 is amended to read:

§ 192.52 *Qualifications of successful bidder.* The successful bidder at a sale by public auction must on the day of the sale, deposit with the manager of the land office or other officer conducting the sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one-fifth of the amount bid by him and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 192.42 (e) (4). If the successful bidder is a corporation, it must also file a statement similar to that required by § 192.42 (b).

10. Paragraph (b) of § 192.70 is amended to read:

(b) Any offeror for a lease to lands owned, entered or settled upon as stated above must notify the person entitled to a preference right of the filing of the offer and of the latter's preference right for 30 days after notice to apply for a lease. If the party entitled to a preference right files a proper offer within the 30-day period, he will be awarded a lease; but if he fails to do so, his rights will be considered to have terminated.

11. Section 192.71 is amended to read:

§ 192.71 *Lands in entries or claims not impressed with a reservation of oil and gas.* (a) Where an offer is filed to lease lands noncompetitively in an entry or settlement claim not impressed with an oil or gas reservation, the offer will be rejected unless it is found that the land is prospectively valuable for oil or gas. An offeror for a lease for land already embraced in a nonmineral entry without a reservation of the mineral, and likewise a nonmineral entryman or settler who is contending that the land is nonmineral in character should submit with their respective offer and application, showings of as complete and accurate geologic data as may be procurable, preferably the reports and opinions of qualified experts.

(b) Should the land be found to be prospectively valuable for oil or gas, the entryman or settler will be required to consent to a reservation of the oil or gas to the United States or to contest the mineral finding. If he does neither, the entry will be canceled or his settlement rights denied. If he consents, or contests the finding and is unsuccessful, a lease will be granted to the offeror, unless the entryman or settler has a preference right, but if the entryman or settler prevails in a contest, the offer will be rejected.

12. Section 192.72 is amended to read:

§ 192.72 *Showing required of oil and gas offerors for unsurveyed lands.* Every offeror for oil and gas lease for unsurveyed lands, must state in his offer that there are no settlers upon the land, or if there be settlers, give the name and post office address of each and a description of the lands claimed, by metes and bounds and approximate legal subdivisions.

13. Section 192.80 is amended to read as follows:

§ 192.80 *Rentals.* Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued under section 17 of the act, wholly outside of the known geologic structure of a producing oil or gas field:

(1) For the first lease year, 50 cents per acre or fraction thereof, except as to Alaska where the rate shall be 25 cents per acre or fraction thereof.

(2) For the second and third lease years, no rental.

(3) For the fourth and fifth years, 25 cents per acre or fraction thereof.

(4) For the sixth and each succeeding year, 50 cents per acre or fraction thereof, except as to Alaska where the rate shall be 25 cents per acre or fraction thereof.

(b) On leases wholly or partly within the known geologic structure of a producing oil or gas field:

(1) If issued noncompetitively under section 17 of the act, and not committed to a cooperative or unit plan that contains a general provision for allocation of production, beginning with the first lease year after the expiration of thirty days notice to the lessee that all or part of the land is included in such a structure and for each year thereafter, prior to a discovery of oil or gas on the leased lands, rental of $1.00 per acre or fraction thereof.

(2) If issued noncompetitively under section 17 of the act, and committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in paragraph (a) of this section, shall apply to the acreage not within a participating area, except that the rental for the second and third lease years for such acreage shall be 25 cent per acre or fraction thereof.

(3) If issued competitively, an annual rental, prior to a discovery on the leased lands, of $1.00 per acre or fraction thereof, unless a different rate of rental is prescribed in the lease.

(c) On leases issued in any other way, an annual rental of $1.00 per acre or fraction thereof.

14. Section 192.82 (a) (1) is amended to read:

(1) 12½ percent on noncompetitive leases thereafter issued under section 17 of the act; *Provided, however,* That any holder of a lease for lands in Alaska who shall drill and make the first discovery of oil or gas in commercial quantities in any geologic structure shall pay a royalty on production under the lease of 5 percent for 10 years following the date of discovery, and thereafter the royalty shall be 12½ percent. If such lease is committed to an approved unit or co-

1. Page size 8½ x 14 inches.

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operative plan, the 5 percent rate herein provided shall, for the purpose of computing royalty due the United States, inure to the benefit of all committed land within the participating area established by reason of such discovery.

15. Section 192.130 is amended to read:

§ 192.130 *Preference right to a new lease.* (a) Upon the expiration of its five year term the record title holder of a noncompetitive lease issued prior to August 8, 1946 and maintained in good standing, who has not filed a notice of election pursuant to section 15 of the act of August 8, 1946, may file an offer on Form 4–1158 for a new lease for the same land pursuant to the provisions of section 1 of the act of July 29, 1942 (56 Stat. 726, 30 U. S. C. sec. 226b), provided the leased land is not then within the known geologic structure of a producing oil or gas field. Any lease issued under this section will be for a period of five years and so long thereafter as oil or gas is produced as provided in section 17 of the act and will be subject to the rules and regulations then in force.

(b) To obtain such a new lease, the lessee must, within the period beginning 90 days prior to the date of expiration of the lease and ending on the date of expiration, submit an offer on Form 4–1158 in accordance with § 192.42, accompanied by a proper filing fee and the first year's rental.

16. Paragraphs (a) and (d) of § 192.-141 are amended to read:

§ 192.141 *Requirements for filing of transfers.* (a) All instruments of transfer of a lease or of an interest therein, including assignments of record title, working, or royalty interests, operating agreements and subleases, must be filed for approval within 90 days from the date of final execution and must contain all of the terms and conditions agreed upon by the parties thereto, together with a statement over the transferee's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 192.42 (e) (4) and (f). An application for approval of any such instrument must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will be rejected by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

(d) In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a producing lease, to be recognized by the Department as the holder of the lease, agreement, or interest, there must be furnished the appropriate showing required under § 192.42 (1).

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

OSCAR L. CHAPMAN,
Secretary of the Interior.

NOVEMBER 29, 1950.

[F. R. Doc. 50–11034; Filed, Dec. 4, 1950; 8:46 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1774]

PART 75—SALES AND LEASES

CERTAIN LANDS IN MATANUSKA VALLEY OF ALASKA

Section 75.4 is amended by adding thereto a new sentence, as follows: "Land reported by the Corporation to be not suitable for disposal as part of a farm unit may be sold in tracts of such size and shape as the Corporation may recommend without regard to the above acreage limitations when it is determined by the Corporation that such sale will contribute to the development of the project and safeguard the public interest in the land: *Provided,* That when a special survey is necessary in connection with such a sale, the cost of such survey shall be paid by the purchaser."

The section as amended reads:

§ 75.4 *Persons entitled to make application.* Colonists and settlers who are approved and certified by the Alaska Rural Rehabilitation Corporation may file an application for the purchase or lease of such lands as are not sold to the Corporation. The amount of land sold or leased to any such person shall not exceed the acreage necessary for the purpose of developing a farm unit which will support such person and his family, as determined by the Corporation. Land reported by the Corporation to be not suitable for disposal as part of a farm unit may be sold in tracts of such size and shape as the Corporation may recommend without regard to the above acreage limitations when it is determined by the Corporation that such sale will contribute to the development of the project and safeguard the public interest in the land: *Provided,* That when a special survey is necessary in connection with such a sale, the cost of such survey shall be paid by the purchaser.

(54 Stat. 1191; 48 U. S. C. 353 note)

OSCAR L. CHAPMAN,
Secretary of the Interior.

DECEMBER 18, 1950.

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Land Office Billings

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See Circular 1755 + 1816, to

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management. Department of the Interior

Subchapter A—Alaska

[Circular No. 1775]

PART 64—HOMESITES OR HEADQUARTERS

PURCHASE OF TRACTS NOT EXCEEDING 5 ACRES; FORM AND CONTENTS OF APPLICATIONS

1. Section 64.4 is amended by the addition of two new paragraphs as follows:

§ 64.4 *Form and contents of applications.* * * *

(j) If the land desired for purchase is surveyed, the application must include a description of the tract by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the fractional portion of a sectional lotting, the lot may be subdivided; where such subdivision, however, would result in narrow strips or other areas containing less than 2½ acres, not suitable for disposal as separate units, such adjoining excess areas, in the discretion of the regional administrator and with the consent of the applicant, may be included with the tract applied for, without subdividing and the application will be amended accordingly. Where a supplemental plat is required, to provide a proper description, it will be prepared at the time of approval of the application.

(k) If the land is unsurveyed, the application must be accompanied by a petition for survey, describing the tract applied for with as much certainty as possible, without actual survey, not exceeding 5 acres, and giving the approximate latitude and longitude of one corner of the claim.

2. Section 64.7 (i) is amended to read as follows:

§ 64.7 *Form and contents of application.* * * *

(i) An application for surveyed land must describe the land by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the fractional portion of a sectional lotting, the lot may be subdivided; where such subdivision, however, would result in narrow strips or other areas containing less than 2½ acres, not suitable for disposal as separate units, such adjoining excess areas, in the discretion of the regional administrator and with the consent of the applicant, may be included with the tract applied for, without subdividing, and the application will be amended accordingly. Where a supplemental plat is required to provide a proper description, it will be prepared at the time of approval of the application.

(Sec. 10, 30 Stat. 413, as amended; 48 U. S. C. 461)

OSCAR L. CHAPMAN,
Secretary of the Interior.

DECEMBER 18, 1950.

[F. R. Doc. 50-12109; Filed, Dec. 21, 1950 8:47 a. m.]

Published in Federal Register
Vol. 15, No. 248, of December 22,
1950, at page 9189

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter 2—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

(Circular No. 1730)

Part 64—MINERALS IN ENCUMBRANCES

PROCEDURE FOR ENTRY NOT EXCEEDING 5 ACRES, FOR USE CONTROL OR ADVERTISING

1. Section 64.4 is amended by the addition of two new paragraphs as follows:

§ 64.4 Plans and contents of applications.

* * *

(d) If the land desired for purchase is surveyed, the application must include a description of the tract by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the irregular portion of a surveyed lot, the lot may be subdivided; where such subdivision, however, would result in narrow strips or other areas unsuitable for use than 2½ acres, not suitable for mineral as separate units, such subdivide areas, in the discretion of the regional administrator and with the consent of the applicant, may be included with the tract applied for, without subdivision, and the application will be amended accordingly. Where a survey is required to provide a proper description, it will be prepared at the time of approval of the application.

(e) If the land is unsurveyed, the application must be accompanied by a petition for survey, describing the tract applied for with as much certainty as possible without actual survey; not exceeding 5 acres, and giving the approximate latitude and longitude of one corner of the claim.

2. Section 64.7 (d) is amended to read as follows:

§ 64.7 Form and contents of application.

* * *

(d) An application for surveyed land must describe the land by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the irregular portion of a surveyed lot, the lot may be subdivided, where such subdivision, however, would result in narrow strips or other areas unsuitable for use than 2½ acres, not suitable for mineral as separate units, such subdivide areas, in the discretion of the regional administrator and with the consent of the applicant, may be included with the tract applied for, without subdivision, and the application will be amended accordingly. Where a survey is required to provide a proper description, it will be prepared at the time of approval of the application.

(Sec. 10, 30 Stat. 413, as amended; 43 U. S. C. 451)

OSCAR L. CHAPMAN,
Secretary of the Interior.

DECEMBER 18, 1950.

[F. R. Doc. 50-11109; Filed, Dec. 21, 1950; 8:47 a. m.]

Published in Federal Register
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1950, at page 9189

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Circular No. 1776

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

PART 67—INDIANS AND ESKIMOS

POSSESSORY CLAIMS TO LANDS AND WATERS OCCUPIED BY NATIVES OF ALASKA

Section 67.18a (a) is amended to read as follows:

§ 67.18a *Rules of practice for hearings upon possessory claims to lands and waters used and occupied by natives of Alaska.* (a) Petitions of native groups of Alaska concerning possessory claims to lands and waters based upon any of the foregoing statutes or upon use or occupancy maintained from aboriginal times to the present day, but not evidenced by formal patent, deed or Executive order, shall be filed with the Secretary of the Interior on or before December 31, 1952. No petition filed thereafter will be considered by the Department. A copy of any such petition shall be forthwith transmitted to the Commissioner of Indian Affairs and the Director of the Bureau of Land Management for preliminary investigations and reports, and such reports shall be made a part of the record at the hearing.

(R. S. 2478, 34 Stat. 197; 43 U. S. C. 1201, 48 U. S. C. 357. Interprets or applies sec. 8, 23 Stat. 26; sec. 14, 26 Stat. 1101, 30 Stat. 409, 413, 31 Stat. 321, 330, 43 Stat. 464, 49 Stat. 1250; 48 U. S. C. 356, 358, 359, 371, 61, 356, 221, 362)

OSCAR L. CHAPMAN,
Secretary of the Interior.

DECEMBER 12, 1950.

[F. R. Doc. 50-11825; Filed, Dec. 18, 1950; 8:45 a. m.]

Published in Federal Register
Vol. 15, No. 245, of December 19, 1950,
at page 9064

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter L—Mineral Lands

[Circular 1777]

PART 199—MINERALS SUBJECT TO LEASE UNDER SPECIAL LAWS

DISPOSAL OF MINERAL RESOURCES ON CERTAIN NATIONAL FOREST LANDS IN MINNESOTA

In order to permit the development and utilization of the mineral resources, pursuant to the act of June 30, 1950 (64 Stat. 311; 16 U. S. C. Sup. IV 508 (b)), on national forest lands in Minnesota where such mineral development is not otherwise authorized, the following text is added to Part 199:

AUTHORITY: §§ 199.61 to 199.65 issued under Pub. Law 594, 81st Cong.

§ 199.61 *Authority.* The act of June 30, 1950 (64 Stat. 311; 16 U. S. C. Sup. IV 508 (b)) permits the prospecting, development, and utilization of those mineral resources in public domain lands, including lands received in exchange for public domain lands, or for timber on such lands pursuant to Part 148 of this chapter, situated within the exterior boundaries of the national forests in Minnesota, which, because of withdrawal, reservation, statutory limitation, or otherwise, are not subject to the general mining laws of the United States or to mineral leasing laws,[1] and for the development and utilization of which no other authority exists.

[1] The Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181) as amended provides for the leasing of oil, gas, oil shale, coal, phosphate, sodium, and potassium deposits in public domain lands, including such lands generally in national forests. See Parts 191–197 of this chapter.

§ 199.62 *Minerals to be leased.* All disposal of mineral resources covered by §§ 199.61 to 199.65 shall be by lease or permit.

§ 199.63 *Consent of Secretary of Agriculture; conditions and stipulations.* Leases or permits under the act of June 30, 1950, may be issued only with the prior consent of the Secretary of Agriculture or his delegate, and subject to such conditions and stipulations as that official may prescribe to insure adequate utilization and protection of the lands for the primary national forest purpose for which they are being administered.

§ 199.64 *Existing regulations applicable.* To the extent that they are applicable and not inconsistent with §§ 199.61 to 199.65, the leasing of minerals under the act of June 30, 1950, shall be governed by §§ 200.32 to 200.36 inclusive, of this chapter. Any lease or permit issued under §§ 199.61 to 199.65 shall state that it is subject to the terms and provisions of the act of June 30, 1950.

§ 199.65 *Distribution of proceeds.* All receipts derived from permits or leases issued under §§ 199.61 to 199.65 will be deposited by the Bureau of Land Management into the same funds or accounts in the Treasury for distribution in the same manner as prescribed for other national forest revenue by 16 U. S. C. sections 499, 500, and 501.

OSCAR L. CHAPMAN,
Secretary of the Interior.

DECEMBER 21, 1950.

[F. R. Doc. 50-12324; Filed, Dec. 27, 1950; 8:56 a. m.]

See Circ 1544, 1632 1673 & 1805

Published in Federal Register Vol. 15, No. 251, of December 28, 1950, page 9355

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter L—Mineral Leasing

(Circular 1777)

PART 192—GENERAL REGULATIONS TO LEASE UNDER SPECIAL LAWS

LEASING OF MINERAL RESOURCES ON CERTAIN NATIONAL FOREST LANDS IN MINNESOTA

In order to permit the development and utilization of the mineral resources, pursuant to the act of June 30, 1948 (62 Stat. 411; 16 U. S. C. Supp. IV 508 (b)), on national forest lands in Minnesota, where such mineral development is not otherwise authorized, the following rule is added to Part 192:

Sec.
192.61 Authority.
192.62 Minerals to be leased.
192.63 Consent of Secretary of Agriculture.
192.64 Conditions and stipulations.
192.65 Existing regulations applicable.
192.66 Distribution of proceeds.

AUTHORITY: § 192.61 to 192.66 issued under Pub. Law 508, 80th Cong.

§ 192.61 Authority. The act of June 30, 1948 (62 Stat. 411; 16 U. S. C. Supp. IV 508 (b)) permits the Secretary of Agriculture, and utilization of these mineral resources on public domain lands, including any lands reserved in accordance for public economic lands, or for timber or mineral lands pursuant to Part 185 of this chapter, related within the exterior boundaries of the national forests in Minnesota, which, because of withdrawal, reservation, status, statutory limitation, or otherwise, are not subject to the general mining laws of the United States or to applicable leasing laws and for the development and utilization of which no other authority exists.

---

[1] The Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181) as amended provides for the leasing of oil, gas, oil shale, coal, phosphate, sodium, and potassium on public lands in Alaska, Alaska lands, including such lands currently in national forests. See Parts 192—197 of this chapter.

§ 192.62 Minerals to be leased. All mineral of mineral resources covered by §§ 192.61 to 192.66 shall be by lease or permit.

§ 192.63 Consent of Secretary of Agriculture. Consent and subsistence, leases or permits under the act of June 30, 1948, may be issued only with the prior consent of the Secretary of Agriculture or his delegate, and subject to such conditions and stipulations as the official may prescribe to insure adequate utilization and protection of the lands for the primary national forest purpose for which they are being administered.

§ 192.64 Existing regulations applicable. To the extent that they are applicable and not inconsistent with §§ 192.61 to 192.66, the leasing of minerals under the act of June 30, 1948, shall be governed by §§ 185.23 to 185.38 inclusive, of this chapter. Any lease or permit issued under §§ 192.61 to 192.66 shall state that it is subject to the terms and provisions of the act of June 30, 1948.

§ 192.65 Distribution of proceeds. All receipts derived from permits or leases issued under §§ 192.61 to 192.66 will be deposited by the Bureau of Land Management into the sale funds or accounts in the Treasury for distribution in the same manner as prescribed for other national forest revenue by 16 U. S. C. sections 499, 500, and 501.

DOUGLAS L. CHAMBERS,
Secretary of the Interior.

DECEMBER 21, 1950.

[F. R. Doc. 50-10818; Filed, Dec. 27, 1950; 8:50 a. m.]

Published in Federal Register Vol. 15, No. 251, of December 28, 1950, page 9155

CHAPTER IV: B.A.E. Fire distribution, Region I - 50
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Also see Circ. 1815 & Circ. 859

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1778]

PART 71—MINERAL LANDS; OIL AND GAS, PHOSPHATE AND OIL SHALE LEASES, AND POTASH AND SODIUM PERMITS AND LEASES

Part 71 is revised to read as follows:

AUTHORITY: §§ 71.1 to 71.3 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189.

§ 71.1 *Mineral leasing laws and regulations applicable in Alaska.* Subject to the provisions of §§ 71.2 and 71.3, the regulations under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181, et seq.), as amended and supplemented, including the Act of February 7, 1927 (44 Stat. 1057; 30 U. S. C. 281, et seq.), contained in Parts 191 and 192 and 194 to 197, inclusive, of this chapter, shall govern the issuance of oil and gas, phosphate and oil shale leases, and potash and sodium permits and leases, in Alaska.

§ 71.2 *Description of unsurveyed lands; conflicting applications for unsurveyed lands.* (a) Applications for leases of unsurveyed lands shall describe them by metes and bounds; the corners must be plainly marked on the ground by setting substantial posts or heaping up mounds of stone, and the boundaries must conform to true cardinal directions in so far as practicable.

(1) Where the lands are within two miles of an approved public land survey corner, a corner of the area applied for shall be connected by courses and distances to that corner. There may be utilized as the point of reference the initial monument erected by another applicant who has described said monument by courses and distances with reference to a public survey corner. In such case the location of the adopted monument with respect to the public land survey corner must be stated, or the field notes or calculations by which the location of the applicant's initial monument, with reference to the public survey monument, was obtained, must be furnished.

(2) Where the lands are not within two miles of an approved public land survey corner, the initial monument shall be connected by courses and distances to such permanent monuments as will enable the Bureau of Land Management to identify its location from its records and maps. A plat or chart illustrating the location of said monument will aid in a determination of its location, and its position must also be noted with reference to rivers, creeks, mountains, or mountain peaks, towns, or other prominent topographic points, or natural objects.

(b) In order to permit adjustment of conflicts, areas covered by all applications in conflict with a prior application or claim must be identified with reference to a monument of the first application or claim which can be definitely ascertained and located upon the records and plats of the Bureau of Land Management.

Amended by Circ. 1859

§ 71.3 *Leases for lands reserved to the Territory of Alaska for educational purposes.* Under the provisions of the act of August 7, 1939 (53 Stat. 1243; 48 U. S. C. 353) any person having acquired a permit or lease from the United States for the prospecting for or mining oil, gas, phosphate, oil shale, potash or sodium deposits from the lands reserved to the Territory of Alaska for educational purposes by the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353), as set forth in § 69.19 of this chapter, shall compensate a Territorial lessee, if any, for any resulting damages to crops or improvements on such lands, where the mineral permit or lease shall be issued after the issuance of the Territorial lease. The act also provides that any lease issued by the Territory for such reserved lands, after a lease has been issued under the mineral leasing laws, shall be with due regard to the rights of the mineral claimant. Controversies between Territorial lessees and permittees or lessees under the mineral leasing laws on the same lands involving the right of possession, occupancy and use of the lands, or liability for damages, are matters within the jurisdiction of the local courts.

OSCAR L. CHAPMAN,
Secretary of the Interior.

DECEMBER 21, 1950.

[F. R. Doc. 50-12323; Filed, Dec. 27, 1950; 8:45 a. m.]

Published in Federal Register
Vol. 15, No. 251, of December 28,
1950, page 9355

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Replaced by no. 1807

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1779]

PART 160—GRAZING LEASES

RENTAL

Section 160.14 *Rental* is hereby amended, effective May 1, 1951, to read as follows:

§ 160.14 *Rental.* The lessee shall pay the lease rental in the amount and manner specified in the lease. The rental shall be computed in conformity with the following rate tabulations, unless for sufficient reasons a different rate is authorized by the Director:

GRAZING RENTAL RATE TABULATION

Estimated grazing capacity in acres per animal unit month	Estimated grazing capacity in animal units year-long per section	Yearly lease-rate per acre
107.00	0.5	$0.001
53.00	1.0	.002
36.00	1.5	.003
27.00	2.0	.004
21.00	2.5	.006
18.00	3.0	.007
15.00	3.5	.008
13.00	4.0	.009
12.00	4.5	.010
11.00	5.0	.011
9.00	6.0	.013
7.50	7.0	.016
6.50	8.0	.018
6.00	9.0	.020
5.50	10.0	.022
5.00	11.0	.024
4.50	12.0	.027
4.00	13.0	.030
3.75	14.0	.032
3.50	15.0	.034
3.25	16.0	.037
3.00	17.0	.040
2.75	19.0	.044
2.50	21.0	.048
2.25	24.0	.053
2.00	27.0	.060
1.75	30.0	.069
1.50	36.0	.080
1.25	43.0	.096
1.00	53.0	.120
0.50	107.0	.240
0.25	213.0	.480

One cow or one horse or five sheep or five goats constitute one animal unit. The rental charge will not in any case be fixed at less than $1.00 per annum. The rental may be adjusted to reflect changes in approved rates at the end of each three-year period to apply to the rental charges for the next three-year period.

(Sec. 2, 48 Stat. 1270; 43 U. S. C. 315a)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JANUARY 3, 1951.

[F. R. Doc. 51-282; Filed, Jan. 8, 1951; 8:45 a. m.]

Published in 16 F.R. 232, of January 9, 1951

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1770]

PART 160—GRAZING LEASES

GENERAL

Section 160.16 *Rental* is hereby amended, effective May 1, 1951, to read as follows:

§ 160.16 *Rental.* The lessee shall pay the lease rental in the amount and manner specified in the lease. The rental shall be computed in conformity with the following rate schedules, unless for sufficient reasons a different rate is authorized by the Director:

GRAZING RENTAL RATE TABLE—1951

Yearly inter-rate per acre	Estimated grazing capacity in acres per animal unit year for season	Estimated yearly rental rate per animal unit month
[illegible]	[illegible]	[illegible]

One cow or one horse or five sheep or five goats constitute one animal unit. The rental charge will not in any case be fixed at less than $1.00 per annum. The rental may be adjusted to reflect changes in approved rates at the end of each three-year period to apply to the rental charges for the next three-year period.

(Sec. 2, 48 Stat. 1270; 49 U. S. C. 418a)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JANUARY 3, 1951.

[F. R. Doc. 51-290; Filed, Jan. 8, 1951; 8:45 a. m.]

Published in 16 F.R. 232, of January 9, 1951

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1780]

PART 161—THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

REGULAR LICENSES AND PERMITS

The note following § 161.8 (b) is hereby amended to read as follows:

NOTE: In accordance with the provisions of § 161.8 (b) of the Federal Range Code for Grazing Districts (Circular 1736, 14 F. R. 5509, September 7, 1949) notice is hereby given that effective May 1, 1951, and pursuant to the act of June 28, 1934 (48 Stat. 1275) as amended, a grazing fee of ten cents per animal unit month and a range improvement fee of two cents per animal unit month will be charged each regular licensee or permittee for each month of the grazing period covered by the license or permit, as follows:

1. Grazing fee—10 cents per head for cattle and horses, 2 cents per head for sheep and goats.

2. Range improvement fee—2 cents per head for cattle and horses, two-fifths cent per head for sheep and goats.

Provided, That as to licenses or fee notices issued prior to January 15, 1951, no increase in fees shall be effected hereunder as to such licenses or fee notices until the next license or fee notice is issued.

This notice will not prevent the fixing of a different fee in appropriate cases, in accordance with the provisions of § 161.8 (b) of the Federal Range Code for Grazing Districts.

(Sec. 2, 48 Stat. 1270; 43 U. S. C. 315a)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JANUARY 3, 1951.

[F. R. Doc. 51-283; Filed, Jan. 8, 1951; 8:45 a. m.]

Published in 16 F.R. 232, of
January 9, 1951

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1780]

PART 161—THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS

GRAZING LICENSES AND PERMITS

The note following § 161.8 (b) is hereby amended to read as follows:

NOTE: In accordance with the provisions of § 161.8 (b) of the Federal Range Code for Grazing Districts (Circular 1796, 14 F. R. 4506, September 7, 1949) notice is hereby given that effective May 1, 1951, and pursuant to the Act of June 29, 1934 (48 Stat. 1269) as amended, a grazing fee of ten cents per animal unit month and a range improvement fee of two cents per animal unit month will be charged each regular licensee or permittee for each month of the grazing period covered by the license or permit, as follows:

1. Grazing fee—10 cents per head for cattle and horses, 2 cents per head for sheep and goats.

2. Range improvement fee—3 cents per head for cattle and horses, two-fifths cent per head for sheep and goats.

Provided, That no to increase or fee notices issued prior to January 16, 1951, no increase in fees shall be effected hereunder as to such licenses or fee notices until the next license or fee notice is issued.

This notice will not prevent the fixing of a different fee in appropriate cases, in accordance with the provisions of § 161.8 (b) of the Federal Range Code for Grazing Districts.

(Sec. 2, 48 Stat. 1270; 43 U. S. C. 315a)

DOUGLAS L. CHAPMAN,
Secretary of the Interior.

JANUARY 3, 1951.

[F. R. Doc. 51-392; Filed, Jan. 8, 1951; 8:45 a. m.]

Published in 16 F.R. 292, of January 9, 1951

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Interior—Duplicating Section, Washington, D. C. 4222

Replaced by C 2092

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Circular No. 1781

PART 191—GENERAL REGULATIONS APPLICABLE TO MINERAL PERMITS, LEASES AND LICENSES

GENERAL PROVISIONS

AUTHORITY: §§ 191.1 to 191.40 issued under sec. 32, 41 Stat. 450, sec. 1, 44 Stat. 301; 30 U. S. C. 189, 271. Interpret or apply sec. 5, 44 Stat. 1058, as amended; 30 U. S. C. 285.

GENERAL PROVISIONS

§ 191.1 *Purpose of the leasing acts.* The act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181), as amended and supplemented, including the amendatory act of August 8, 1946 (60 Stat. 950), the act of February 7, 1927 (44 Stat. 1057; 30 U. S. C. 281–287) and the act of April 17, 1926 (44 Stat. 301; 30 U. S. C. 271–276) as amended, hereinafter called "the act," provide for the leasing of oil and gas, coal, potassium, sodium, phosphate, and oil shale, and lands containing such deposits owned by the United States in the public domain and deposits of sulphur and the public lands containing such deposits in the States of Louisiana and New Mexico, except as stated in § 191.2.[1]

[Circ. 1623, Oct. 28, 1946]

§ 191.2 *Lands and deposits to which mineral leasing act does not apply.* The mineral leasing act does not apply (a) to lands containing the mineral deposits named in § 191.1 where such lands are situated in (1) national parks and monuments; (2) Indian reservations; (3) incorporated cities, towns and villages, or (4) naval petroleum and oil shale reserves; nor (b) to lands acquired under the act of March 1, 1911 (36 Stat. 961; 16 U. S. C. 513–519) known as the Appalachian Forest Reserve Act, or other acquired lands.

[Circ. 1623, Oct. 28, 1946]

§ 191.3 *Who may hold leases and permits.* Mineral prospecting permits and mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens; (c) corporations organized under the laws of the United States or of any State or Territory thereof; or (d) in the case of coal, oil, oil shale, or gas, municipalities. A mineral lease or permit will not be issued to a minor.

[Circ. 1623, Oct. 28, 1946; Circ. 1723, Jan. 19, 1949]

§ 191.4 *Rights of aliens.* Aliens may not acquire or hold any direct or indirect interest in permits or leases, except that they may own or control stock in corporations holding permits or leases, if the laws of their country do not deny similar or like privileges to citizens of the United States. A corporation is required to file a certified copy of its articles of incorporation and it must furnish a statement showing the percentage of each class of its stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be or who the corporation has reason to believe are aliens, or who have addresses outside of the United States, indicating which classes of stock have voting rights. If more than 10 percent of the voting stock, or of all the stock, is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each, and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. If any appreciable percentage of the stock of the corporation is held by aliens of the excepted class, its application will be denied. (41 Stat. 450, 44 Stat. 302, 1058; 30 U. S. C. 189, 275, 285)

[Circ. 1727, Apr. 5, 1949]

§ 191.5 *Reserved or segregated lands.* With respect to lands embraced in a reservation or segregated for any particular purpose the lessee shall conduct operations in conformity with such requirements as may be made by the Director, Bureau of Land Management, for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of the lease, which latter shall be regarded as the dominant use unless otherwise provided or separately stipulated.

[Circ. 1623, Oct. 28,1946]

§ 191.6 *Special stipulations for lands in national forests or reclamation projects.* Offerors for noncompetitive oil and gas leases and applicants for permits, leases, and licenses for lands in national forests will be required to consent to the inclusion therein of the stipulation on Form 4–216. Where the land has been withdrawn for reclamation purposes the applicant or offeror may be required to consent to the inclusion of a stipulation on Form 4–467 if the lands are potentially irrigable, or Form 4–467 (a) if the lands are within the flow limits of a reservoir site, or Form 4–467 (b) if the lands are within the drainage area of a constructed reservoir.

[1] Coal deposits in Alaska are not covered by these acts but may be disposed of under the act of October 20, 1914 (38 Stat. 742; 48 U. S. C. 434), as amended by the act of March 4, 1921 (41 Stat. 1363; 48 U. S. C. 444), relating solely to Alaska, and the regulations in §§ 70.2 to 70.29 of this chapter.

Reprint, January 29, 1951, of Circular No. 1623, October 28, 1946, as amended by Circular No. 1623a, June 6, 1947, Circular No. 1655, September 5, 1947, Circular No. 1696, September 17, 1948, Circular No. 1723, January 19, 1949, Circular No. 1727, April 5, 1949, and Circular 1772, November 29, 1950.

Other conditions may be imposed, if deemed necessary, to protect land withdrawn for reclamation purposes.

[Circ. 1772, Nov. 29, 1950]

§ 191.7 *Multiple development or other disposition of land.* The granting of a permit or lease for the prospecting, development, or production of deposits of any one mineral will not preclude the issuance of other permits or leases for the same land for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of the leased lands with a reservation of the mineral deposits to the United States.

[Circ. 1623, Oct. 28, 1946]

§ 191.8 *Interests held in common.* An association shall not be deemed to exist between the parties to a contract for development of leased lands, whether or not coupled with an interest in the lease, nor between co-lessees, but each party to any such contract or each co-lessee will be charged with his proportionate interest in the lease. No holding of acreage in common by the same persons in excess of the maximum acreage specified in the law for any one lessee or permittee for the particular mineral deposit so held will be permitted.

[Circ. 1623a, June 6, 1947]

§ 191.9 *Survey of lands for leasing.* Unsurveyed lands containing oil shale, and unsurveyed lands embraced in applications for lease based upon discovery of valuable deposits of potassium, sodium or sulphur under a prospecting permit, must be surveyed by the Government at the expense of the applicant prior to the issuance of a lease of the lands. To secure such a survey, the applicant must obtain from the appropriate regional cadastral engineer an estimate of the cost of the survey and deposit with him the estimated amount. After the survey has been accepted and the plat filed in the district land office the application will be adjusted to the resulting subdivisions and the cost of the survey will be ascertained by prorating the total cost of surveying the township to the area to be leased. The amount thus ascertained will be credited to the appropriation for surveying the public lands and the balance of the deposit, if any, returned to the depositor or his authorized representative. The survey of unsurveyed lands for any coal lease, or for a competitive lease for phosphate, potassium, sodium, oil, or gas, or sulphur will be made at the expense of the Government prior to the issuance of a lease of the lands.

[Circ. 1696, Sept. 17, 1948]

§ 191.10 *Simultaneous applications or offers for lease.* Where applications or offers received by mail or filed over the counter at the same time are in conflict, the right of priority of filing will be determined by public drawing in the manner provided in § 295.8 (b) of this chapter. Notice of the conflict and of the date and hour of the drawing shall be mailed to each applicant or offeror five days prior to such date, and the manager will post notice showing the date and hour of the drawing in a conspicuous place in his office for a period of five days prior to such date.

[Circ. 1772, Nov. 29, 1950]

§ 191.11 *Filing fees.* Offers for noncompetitive oil and gas leases and all applications for prospecting permits, licenses, or noncompetitive leases, excepting phosphate lease applications, must be accompanied by a filing fee of $10 for each application or offer. Such a fee will be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

[Circ. 1772, Nov. 29, 1950]

§ 191.12 *Disposition of fees.*

Deleted by Circ. 1723, Jan. 19, 1949.

§ 191.13 *Payments of rentals and royalties.* Unless otherwise directed by the Secretary, rentals and royalties under all leases and permits issued under the act shall be paid to the manager of the land office for the land district in which the leased lands are situated. In States where there are no land offices, the payments required with applications and offers shall be made to the Director, Bureau of Land Management. In such States all payments which subsequently become due must be made to the proper regional administrator. All remittances shall be made payable to the Treasurer of the United States.

[Circ. 1772, Nov. 29, 1950]

§ 191.14 *Bonds with individual sureties.* Where surety bonds are tendered with individuals as sureties they must be executed by not less than two qualified individual sureties to cover compliance with all terms and conditions of the lease or permit or the applicable law or regulations. Each surety must execute a statement showing that he is worth in real property not exempt from execution, double the sum specified in the undertaking, over and above his just debts and liabilities and that he is either a resident of the same State and the United States Judicial District as the principal on the bond, or of the State and the Judicial District in which the lands involved are located. There also must be furnished a certificate by a judge or clerk of a court of record, a United States attorney, a United States Commissioner, or a United States postmaster, as to the identity, signature, and financial competency of the sureties. All bonds furnished with individual sureties will be examined every two years, or at any other time when found advisable, and the principal on the bond will be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required. The statement of justification required to be furnished by the sureties, and the certificate of competency should be on Form 4–215.

[Circ. 1623, Oct. 28, 1946]

§ 191.15 *Reinstatement of rejected applications for lands restored from withdrawal or use for war purposes.* Hereafter, upon publication of a revocation of a withdrawal or of a use permit made or granted in connection with the prosecution of World War II, a mineral permit or lease applicant whose application was rejected solely because of the subsequent withdrawal of the land for use in connection with the prosecution of the war or because, either before or after the application was filed, a permit was granted to use the land for war purposes, may apply for and obtain a reinstatement of his application. If the application for reinstatement is for lands restored from a withdrawal it must be filed prior to the date fixed for the filing of applications by the general public; if for land affected by the revocation of permits, within 60 days from the date of publication of such revocation. No application for reinstatement will be considered unless it is timely filed and accompanied by the proper filing fee and the full amount of the first year's rental.

[Circ. 1655, Sept. 5, 1947]

ROYALTY AND RENTAL RELIEF; SUSPENSION OF OPERATIONS AND PRODUCTION

§ 191.25 *Waiver, suspension, or reduction of rental or minimum royalty or reduction of royalty on mineral leases.* (a) In order to encourage the greatest ultimate recovery of coal, phosphate, potassium, sodium, oil shale, oil, or gas and sulphur, and in the interest of conservation, the Secretary of the Interior whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein may waive, suspend, or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes.

(b) An application for any of the above benefits shall be filed in triplicate in the office of the oil and gas supervisor for oil and gas leases or the office of the mining supervisor for coal, phosphate, potassium, sodium, oil shale and sulphur leases. It must contain the serial number of the leases, the land district, the name of the record title holder and operator or sublessee and the description of the lands by legal subdivision.

(1) Each application involving oil or gas shall show the number, location, and status of each well that has been drilled, a tabulated statement for each month covering a period of not less than six months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty computed in accordance with the oil and gas operating regulations, the number of wells counted as producing each month, and the average production per well per day.

(2) Each application involving coal, phosphate, potassium, sodium, oil shale and sulphur shall show the number and location of each mine, a map showing the extent of the mining operations, a tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months next prior to the date of filing of the application, and the average production per day mined for each month and complete information as to why the minimum production was not attained.

(c) Every application must contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products, and all facts tending to show whether the wells or mines can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty ful' information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant must also file agreements of the holders of the lease and of the royalty holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

[Circ. 1696, Sept.17, 1948]

§ 191.26 *Suspension of operations and production and suspension of rental payments.* (a) When the Secretary of the Interior in the interest of conservation directs or assents to the suspension of all operations and production on any lease issued under the act no payment of acreage rental or minimum royalty prescribed in the lease is required during such period of suspension. Any such suspension if granted shall be effective beginning with the first day of the lease month following the date of filing of written application for such suspension in triplicate in the office of the oil and gas supervisor for oil and gas leases and the mining supervisor for all other mineral leases, and ending with the first day of the lease month in which relief is terminated in writing by the Secretary of the Interior or the respective supervisor. Where rentals have been paid in advance proper credit will be allowed on the next rental or royalty payment due under the lease. Complete information must be furnished showing the necessity for suspension of operation and production in the interest of conservation.

(b) As to oil and gas leases, no suspension of operations and production and consequent suspension of rentals will be granted on any lease in the absence of a well capable of production on the leasehold except where the Secretary directs a suspension of operations in the interest of conservation.

(c) The term of a lease shall be extended by adding thereto any period of suspension of operations and production assented to or directed by the Secretary of the Interior.

(d) The minimum annual production requirements of a lease issued under the act for coal, phosphate, potassium, sodium, oil shale or sulphur shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the Secretary of the Interior in the interest of conservation.

[Circ. 1623, Oct. 28, 1946; Circ. 1696, Sept. 17, 1948]

§ 191.27 *Applicability of relief.* The relief authorized under §§ 191.25 and 191.26 may also be obtained for any oil and gas leases included within an approved unit or cooperative plan of development and operation.

[Circ. 1623, Oct. 28, 1946]

LEASING OF MINERALS DEVELOPED BY GOVERNMENTAL AGENCY TO AID IN PROSECUTING WORLD WAR II

§ 191.40 *Leases to Governmental agency or its assigns.* Except as otherwise provided by law, any mineral deposits (other than for oil and gas) and public lands containing such deposits which are subject to disposition under the provisions of the act, the production from which has been used by any Federal agency in connection with the prosecution of World War II, may be leased to the agency controlling the facilities using such production, or to any purchaser or lessee of such facilities, by negotiation, or by requiring the agency, its purchaser or lessee to meet the highest competitive bid received under sealed bids for such lease.

[Circ. 1623, Oct. 28, 1946]

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	Branch of Minerals			-	100
	Mrs. Donnelly, Rm. 5648			-	100

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Circular No. 1781

See Circ. 1821 for 191.3 + 191.6 & Circ. 1871 for 191.26

PART 191—GENERAL REGULATIONS APPLICABLE TO MINERAL PERMITS, LEASES AND LICENSES

AUTHORITY: §§ 191.1 to 191.40 issued under sec. 32, 41 Stat. 450, sec. 1, 44 Stat. 301; 30 U. S. C. 189, 271. Interpret or apply sec. 5, 44 Stat. 1058, as amended; 30 U. S. C. 285.

GENERAL PROVISIONS

§ 191.1 *Purpose of the leasing acts.* The act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181), as amended and supplemented, including the amendatory act of August 8, 1946 (60 Stat. 950), the act of February 7, 1927 (44 Stat. 1057; 30 U. S. C. 281–287) and the act of April 17, 1926 (44 Stat. 301; 30 U. S. C. 271–276) as amended, hereinafter called "the act," provide for the leasing of oil and gas, coal, potassium, sodium, phosphate, and oil shale, and lands containing such deposits owned by the United States in the public domain and deposits of sulphur and the public lands containing such deposits in the States of Louisiana and New Mexico, except as stated in § 191.2.[1]

[Circ. 1623, Oct. 28, 1946]

§ 191.2 *Lands and deposits to which mineral leasing act does not apply.* The mineral leasing act does not apply (a) to lands containing the mineral deposits named in § 191.1 where such lands are situated in (1) national parks and monuments; (2) Indian reservations; (3) incorporated cities, towns and villages, or (4) naval petroleum and oil shale reserves; nor (b) to lands acquired under the act of March 1, 1911 (36 Stat. 961; 16 U. S. C. 513–519) known as the Appalachian Forest Reserve Act, or other acquired lands.

[Circ. 1623, Oct. 28, 1946]

§ 191.3 *Who may hold leases and permits.* Mineral prospecting permits and mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens; (c) corporations organized under the laws of the United States or of any State or Territory thereof; or (d) in the case of coal, oil, oil shale, or gas, municipalities. A mineral lease or permit will not be issued to a minor.

See Circ. 1821

[Circ. 1623, Oct. 28, 1946; Circ. 1723, Jan. 19, 1949]

§ 191.4 *Rights of aliens.* Aliens may not acquire or hold any direct or indirect interest in permits or leases, except that they may own or control stock in corporations holding permits or leases, if the laws of their country do not deny similar or like privileges to citizens of the United States. A corporation is required to file a certified copy of its articles of incorporation and it must furnish a statement showing the percentage of each class of its stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be or who the corporation has reason to believe are aliens, or who have addresses outside of the United States, indicating which classes of stock have voting rights. If more than 10 percent of the voting stock, or of all the stock, is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each, and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. If any appreciable percentage of the stock of the corporation is held by aliens of the excepted class, its application will be denied. (41 Stat. 450, 44 Stat. 302, 1058; 30 U. S. C. 189, 275, 285)

[Circ. 1727, Apr. 5, 1949]

§ 191.5 *Reserved or segregated lands.* With respect to lands embraced in a reservation or segregated for any particular purpose the lessee shall conduct operations in conformity with such requirements as may be made by the Director, Bureau of Land Management, for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purpose of the lease, which latter shall be regarded as the dominant use unless otherwise provided or separately stipulated.

[Circ. 1623, Oct. 28, 1946]

191.6 – See Circ. 1821

§ 191.6 *Special stipulations for lands in national forests or reclamation projects.* Offerors for noncompetitive oil and gas leases and applicants for permits, leases, and licenses for lands in national forests will be required to consent to the inclusion therein of the stipulation on Form 4–216. Where the land has been withdrawn for reclamation purposes the applicant or offeror may be required to consent to the inclusion of a stipulation on Form 4–467 if the lands are potentially irrigable, or Form 4–467 (a) if the lands are within the flow limits of a reservoir site, or Form 4–467 (b) if the lands are within the drainage area of a constructed reservoir.

[1] Coal deposits in Alaska are not covered by these acts but may be disposed of under the act of October 20, 1914 (38 Stat. 742; 48 U. S. C. 434), as amended by the act of March 4, 1921 (41 Stat. 1363; 48 U. S. C. 444), relating solely to Alaska, and the regulations in §§ 70.2 to 70.29 of this chapter.

Reprint, January 29, 1951, of Circular No. 1623, October 28, 1946, as amended by Circular No. 1623a, June 6, 1947, Circular No. 1655, September 5, 1947, Circular No. 1696, September 17, 1948, Circular No. 1723, January 19, 1949, Circular No. 1727, April 5, 1949, and Circular 1772, November 29, 1950.

Other conditions may be imposed, if deemed necessary, to protect land withdrawn for reclamation purposes.

[Circ. 1772, Nov. 29, 1950]

§ 191.7 *Multiple development or other disposition of land.* The granting of a permit or lease for the prospecting, development, or production of deposits of any one mineral will not preclude the issuance of other permits or leases for the same land for deposits of other minerals with suitable stipulations for simultaneous operation, nor the allowance of applicable entries, locations, or selections of the leased lands with a reservation of the mineral deposits to the United States.

[Circ. 1623, Oct. 28, 1946]

§ 191.8 *Interests held in common.* An association shall not be deemed to exist between the parties to a contract for development of leased lands, whether or not coupled with an interest in the lease, nor between co-lessees, but each party to any such contract or each co-lessee will be charged with his proportionate interest in the lease. No holding of acreage in common by the same persons in excess of the maximum acreage specified in the law for any one lessee or permittee for the particular mineral deposit so held will be permitted.

[Circ. 1623a, June 6, 1947]

§ 191.9 *Survey of lands for leasing.* Unsurveyed lands containing oil shale, and unsurveyed lands embraced in applications for lease based upon discovery of valuable deposits of potassium, sodium or sulphur under a prospecting permit, must be surveyed by the Government at the expense of the applicant prior to the issuance of a lease of the lands. To secure such a survey, the applicant must obtain from the appropriate regional cadastral engineer an estimate of the cost of the survey and deposit with him the estimated amount. After the survey has been accepted and the plat filed in the district land office the application will be adjusted to the resulting subdivisions and the cost of the survey will be ascertained by prorating the total cost of surveying the township to the area to be leased. The amount thus ascertained will be credited to the appropriation for surveying the public lands and the balance of the deposit, if any, returned to the depositor or his authorized representative. The survey of unsurveyed lands for any coal lease, or for a competitive lease for phosphate, potassium, sodium, oil, or gas, or sulphur will be made at the expense of the Government prior to the issuance of a lease of the lands.

[Circ. 1696, Sept. 17, 1948]

§ 191.10 *Simultaneous applications or offers for lease.* Where applications or offers received by mail or filed over the counter at the same time are in conflict, the right of priority of filing will be determined by public drawing in the manner provided in § 295.8 (b) of this chapter. Notice of the conflict and of the date and hour of the drawing shall be mailed to each applicant or offeror five days prior to such date, and the manager will post notice showing the date and hour of the drawing in a conspicuous place in his office for a period of five days prior to such date.

[Circ. 1772, Nov. 29, 1950]

§ 191.11 *Filing fees.* Offers for noncompetitive oil and gas leases and all applications for prospecting permits, licenses, or noncompetitive leases, excepting phosphate lease applications, must be accompanied by a filing fee of $10 for each application or offer. Such a fee will be retained as a service charge even though the application or offer should be rejected or withdrawn in whole or in part.

[Circ. 1772, Nov. 29, 1950]

§ 191.12 *Disposition of fees.*

Deleted by Circ. 1723, Jan. 19, 1949.

§ 191.13 *Payments of rentals and royalties.* Unless otherwise directed by the Secretary, rentals and royalties under all leases and permits issued under the act shall be paid to the manager of the land office for the land district in which the leased lands are situated. In States where there are no land offices, the payments required with applications and offers shall be made to the Director, Bureau of Land Management. In such States all payments which subsequently become due must be made to the proper regional administrator. All remittances shall be made payable to the Treasurer of the United States.

[Circ. 1772, Nov. 29, 1950]

§ 191.14 *Bonds with individual sureties.* Where surety bonds are tendered with individuals as sureties they must be executed by not less than two qualified individual sureties to cover compliance with all terms and conditions of the lease or permit or the applicable law or regulations. Each surety must execute a statement showing that he is worth in real property not exempt from execution, double the sum specified in the undertaking, over and above his just debts and liabilities and that he is either a resident of the same State and the United States Judicial District as the principal on the bond, or of the State and the Judicial District in which the lands involved are located. There also must be furnished a certificate by a judge or clerk of a court of record, a United States attorney, a United States Commissioner, or a United States postmaster, as to the identity, signature, and financial competency of the sureties. All bonds furnished with individual sureties will be examined every two years, or at any other time when found advisable, and the principal on the bond will be required to furnish new statements of justification by the sureties and a new certificate of financial competency, and if such sureties are unable to qualify additional security will be required. The statement of justification required to be furnished by the sureties, and the certificate of competency should be on Form 4–215.

[Circ. 1623, Oct. 28, 1946]

§ 191.15 *Reinstatement of rejected applications for lands restored from withdrawal or use for war purposes.* Hereafter, upon publication of a revocation of a withdrawal or of a use permit made or granted in connection with the prosecution of World War II, a mineral permit or lease applicant whose application was rejected solely because of the subsequent withdrawal of the land for use in connection with the prosecution of the war or because, either before or after the application was filed, a permit was granted to use the land for war purposes, may apply for and obtain a reinstatement of his application. If the application for reinstatement is for lands restored from a withdrawal it must be filed prior to the date fixed for the filing of applications by the general public; if for land affected by the revocation of permits, within 60 days from the date of publication of such revocation. No application for reinstatement will be considered unless it is timely filed and accompanied by the proper filing fee and the full amount of the first year's rental.

[Circ. 1655, Sept. 5, 1947]

ROYALTY AND RENTAL RELIEF; SUSPENSION OF OPERATIONS AND PRODUCTION

§ 191.25 *Waiver, suspension, or reduction of rental or minimum royalty or reduction of royalty on mineral leases.* (a) In order to encourage the greatest ultimate recovery of coal, phosphate, potassium, sodium, oil shale, oil, or gas and sulphur, and in the interest of conservation, the Secretary of the Interior whenever he determines it necessary to promote development or finds that the leases cannot be successfully operated under the terms provided therein may waive, suspend, or reduce the rental or minimum royalty or reduce the royalty on an entire leasehold, or on any deposit, tract, or portion thereof segregated for royalty purposes.

(b) An application for any of the above benefits shall be filed in triplicate in the office of the oil and gas supervisor for oil and gas leases or the office of the mining supervisor for coal, phosphate, potassium, sodium, oil shale and sulphur leases. It must contain the serial number of the leases, the land district, the name of the record title holder and operator or sublessee and the description of the lands by legal subdivision.

(1) Each application involving oil or gas shall show the number, location, and status of each well that has been drilled, a tabulated statement for each month covering a period of not less than six months prior to the date of filing the application of the aggregate amount of oil or gas subject to royalty computed in accordance with the oil and gas operating regulations, the number of wells counted as producing each month, and the average production per well per day.

(2) Each application involving coal, phosphate, potassium, sodium, oil shale and sulphur shall show the number and location of each mine, a map showing the extent of the mining operations, a tabulated statement of the minerals mined and subject to royalty for each month covering a period of not less than 12 months next prior to the date of filing of the application, and the average production per day mined for each month and complete information as to why the minimum production was not attained.

(c) Every application must contain a detailed statement of expenses and costs of operating the entire lease, the income from the sale of any leased products, and all facts tending to show whether the wells or mines can be successfully operated upon the royalty or rental fixed in the lease. Where the application is for a reduction in royalty ful' information shall be furnished as to whether royalties or payments out of production are paid to others than the United States, the amounts so paid and efforts made to reduce them. The applicant must also file agreements of the holders of the lease and of the royalty holders to a permanent reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

[Circ. 1696, Sept.17, 1948]

§ 191.26 *Suspension of operations and production and suspension of rental payments.* (a) When the Secretary of the Interior in the interest of conservation directs or assents to the suspension of all operations and production on any lease issued under the act no payment of acreage rental or minimum royalty prescribed in the lease is required during such period of suspension. Any such suspension if granted shall be effective beginning with the first day of the lease month following the date of filing of written application for such suspension in triplicate in the office of the oil and gas supervisor for oil and gas leases and the mining supervisor for all other mineral leases, and ending with the first day of the lease month in which relief is terminated in writing by the Secretary of the Interior or the respective supervisor. Where rentals have been paid in advance proper credit will be allowed on the next rental or royalty payment due under the lease. Complete information must be furnished showing the necessity for suspension of operation and production in the interest of conservation.

(b) As to oil and gas leases, no suspension of operations and production and consequent suspension of rentals will be granted on any lease in the absence of a well capable of production on the leasehold except where the Secretary directs a suspension of operations in the interest of conservation.

(c) The term of a lease shall be extended by adding thereto any period of suspension of operations and production assented to or directed by the Secretary of the Interior.

(d) The minimum annual production requirements of a lease issued under the act for coal, phosphate, potassium, sodium, oil shale or sulphur shall be proportionately reduced for that portion of a lease year for which suspension of operations and production is directed or granted by the Secretary of the Interior in the interest of conservation.

[Circ. 1623, Oct. 28, 1946; Circ. 1696, Sept. 17, 1948]

§ 191.27 *Applicability of relief.* The relief authorized under §§ 191.25 and 191.26 may also be obtained for any oil and gas leases included within an approved unit or cooperative plan of development and operation.

[Circ. 1623, Oct. 28, 1946]

LEASING OF MINERALS DEVELOPED BY GOVERNMENTAL AGENCY TO AID IN PROSECUTING WORLD WAR II

§ 191.40 *Leases to Governmental agency or its assigns.* Except as otherwise provided by law, any mineral deposits (other than for oil and gas) and public lands containing such deposits which are subject to disposition under the provisions of the act, the production from which has been used by any Federal agency in connection with the prosecution of World War II, may be leased to the agency controlling the facilities using such production, or to any purchaser or lessee of such facilities, by negotiation, or by requiring the agency, its purchaser or lessee to meet the highest competitive bid received under sealed bids for such lease.

[Circ. 1623, Oct. 28, 1946]

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	"	"	"	7 -	800
	Wash. Div. & Branch Chiefs				
	Branch of Minerals			-	100
	Mrs. Donnelly, Rm. 5648			-	100

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See #1840

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Circular No. 1782

PART 192—OIL AND GAS LEASES

AUTHORITY: §§ 192.1 to 192.161 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189.

NOTE: Until an election is filed as provided for in this part, leases issued prior to August 8, 1946, shall continue to be governed by the pertinent provisions of this part theretofore in force as well as by the regulations in this part to the extent that they are applicable.

GENERAL PROVISIONS

§ 192.1 *Applicability of amendatory act to existing leases.* Prior to the filing of the notice of election hereinafter referred to, the act of August 8, 1946 (60 Stat. 950; 30 U. S. C. 181) applies to leases issued prior to the date of that act only where the amendatory act so provides. The owner of any lease issued prior to August 8, 1946, may elect pursuant to section 15 to come entirely under the provisions of that act by filing a notice of election to have his lease governed by the amendatory act, accompanied by the consent of the surety if there is a bond covering the lease. A notice of election so filed shall constitute an amendment of all provisions of the lease to conform with the provisions of the amendatory act and the regulations issued hereunder.

[Circ. 1719, Dec. 29, 1948]

§ 192.2 *Helium.* The ownership of and the right to extract helium from all gas produced from lands leased or otherwise disposed of under the act have been reserved to the United States. Appropriate provision is made in leases with respect to the recovery of helium.

[Circ. 1624, Oct. 28, 1946]

§ 192.3 *Acreage limitations on leases.* (a) No person, association, or corporation, except as in the act provided, may hold more than 15,360 acres in any one state, whether directly through the ownership of leases or interests in leases, or indirectly as a member of an association, or associations, or as a stockholder of a corporation, or corporations, holding leases or interests therein or both. All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior and all operating, drilling, or development agreements approved under section 17 (b) of the act, other than communitization agreements, and all leases issued under sections 18 and 19 of the act shall not be included in computing accountable acreage under section 27 of the act.

(b) In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be such party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of

Reprint, January 29, 1951, of Circular No. 1624, October 28, 1946, as amended by Circular No. 1624a, June 6, 1947, Circular No. 1650, July 24, 1947, Circular No. 1662, October 29, 1947, Circular No. 1686, June 25, 1948, Circular No. 1719, December 29, 1948, Circular No. 1719, Amendment No. 1, February 28, 1949, Circular No. 1727, April 5, 1949, Circular No. 1769, October 13, 1950, and Circular No. 1773, November 29, 1950.

the corporation's or association's accountable acreage. Parties owning a royalty or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage.

[Circ. 1624, Oct. 28, 1946]

(c) No lease will be issued and no transfer will be approved until it has been shown pursuant to the requirements of § 192.42 (e) (4) that the lessee or transferee is entitled to hold the acreage. Any party found to hold or control accountable acreage computed in accordance with the principles above set forth in excess of the prescribed limitations shall be given thirty days within which to file proof of the reduction of his holdings or control so as to conform with the prescribed limitation.

[Circ. 1773, Nov. 29, 1950]

§ 192.4 *Acreage limitations on options.* (a) Acreage held under a nonrenewable option, valid only for two years or such longer period as may be authorized by the Secretary, for the purpose of geological or geophysical exploration, shall not be chargeable under § 192.3, but no optionee, except as permitted by the act of August 8, 1946, may hold options at any one time for more than 100,000 acres in any one State.

[Circ. 1624, Oct. 28, 1946]

(b) No such option shall be taken for more than two years without the prior approval of the Secretary of the Interior, except that an option hereafter taken on a lease application or offer may be for the period of time until issuance of the lease and two years thereafter. Where it is sought to obtain options for periods in excess of those provided in the preceding sentence, an application should be filed with the Director, Bureau of Land Management, accompanied by a complete showing as to the special or unusual circumstances which are believed to justify approval of the application by the Secretary.

(c) Within the meaning of this section, options may be taken only on lands embraced in leases and offers or applications for leases and the acreage included in any such option taken upon an application or offer for a lease shall be chargeable from and after the date of such option.

[Circ. 1773, Nov. 29, 1950]

(d) It shall be permissible for any such option to provide that where all or any part of the land covered thereby is included in a cooperative or unit plan (as defined in § 192.20) duly executed by the parties and submitted to the Secretary for final approval prior to the expiration of the two-year option period, then, as to that part of the land covered by said option which is included in said cooperative or unit plan, such option shall not expire until a date 30 days after the date of final approval or disapproval by the Secretary of that cooperative or unit plan.

[Circ. 1624, Oct. 28, 1946]

(e) No acreage shall be chargeable under options taken prior to June 1, 1946, on which geological or geophysical exploration has been actually made if exercised on or before August 8, 1950, but no such option not so exercised will be recognized by the Department, thereafter, for any purpose.

[Circ. 1624a, June 6, 1947]

(f) Each optionee must file with the Director, Bureau of Land Management, within 90 days after December 31 and June 30 of each year, a statement showing as of the prior December 31 and June 30, respectively, (1) name of optioner and serial number of lease, application or offer for lease subject to the option, (2) date and expiration date of each option, (3) number of acres covered by each option, and (4) aggregate number of options held in each state and total acreage thereof.

[Circ. 1773, Nov. 29, 1950]

(g) If the statement shows or it is otherwise ascertained that the optionee holds options in excess of the prescribed limitation, he will be given 30 days within which to file proof of reduction of his option holdings to the limitations prescribed by the act.

[Circ. 1624, Oct. 28, 1946]

§ 192.5 *Lands within one mile of naval petroleum or helium reserves.* No oil and gas lease will be issued for land within one mile of the exterior boundaries of a naval petroleum or a helium reserve, unless the land is being drained of its oil or gas deposits or helium content by wells on privately owned land or unless it is determined by the Secretary, after consultation with the head of the agency exercising jurisdiction over the reserve, that operations under such a lease will not adversely affect the reserve through drainage from known productive horizons.

[Circ. 1773, Nov. 29, 1950]

§ 192.6 *Boundaries of known geologic structures and productive limits of producing oil or gas fields and deposits.* The Director of the Geological Survey will determine the boundaries of the known geologic structures of producing oil or gas fields and, where necessary to effectuate the purposes of the act, the productive limits of producing oil or gas deposits as such limits existed on August 8, 1946. Maps or diagrams showing the boundaries of known geologic structures of producing oil or gas fields and of the productive limits of producing oil or gas deposits will be placed on file in the appropriate district land office, and office of the oil and gas supervisor. Any lessee or his operator may apply to have a determination made as to whether or not the land upon which he intends to drill a well is inside or outside the productive limits of a producing oil or gas deposit. The application should be accompanied by all available geologic data which in his opinion have a bearing on the matter.

[Circ. 1624, Oct. 28, 1946]

§ 192.7 *Agreements to compensate for drainage.* Upon a determination by the Director of the Geological Survey that lands owned by the United States are being drained of oil or gas by wells drilled on adjacent lands, the Director, Bureau of Land Management, may execute agreements with the owners of adjacent lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any lessee affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

[Circ. 1624, Oct. 28, 1946]

§ 192.8 *Protection of leased lands from drainage.* (a) Where land in any lease is being drained of its oil or gas content by a well either on a Federal lease issued at a lower rate of royalty or on land not the property of the United States, the lessee must drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling such wells, the lessee may, with the consent of the Director of the Geological Survey, pay compensatory royalty in the amount determined in accordance with 30 CFR, 221.21.

(b) A period equal to that for which compensatory royalty is paid in lieu of drilling on any Federal lease under this section or § 192.7 shall be added to its primary term where there is no producing well on the lease.

[Circ. 1624, Oct. 28, 1946; Circ. 1650, July 24, 1947]

§ 192.9 *Leases for wildlife refuge lands.* No noncompetitive oil and gas lease under the act will be issued for lands within a wildlife refuge (a) unless those lands are subjected to an approved cooperative or unit plan, and (b) unless the lease contains a provision which prohibits drilling or prospecting on the refuge lands except when consented to by the Secretary of the Interior upon the advice of the Fish and Wildlife Service. Subject to the same two conditions, competitive leases also may issue for refuge lands. Even if these conditions are not met, competitive leases may nevertheless issue if Fish and Wildlife Service reports that oil and gas development may be conducted without destroying the usefulness of the lands as a sanctuary for wildlife, or, in the absence of such a report, wherever the Secretary determines that the national interest in securing the contemplated oil and gas production outweighs the importance of maintaining the refuge as a sanctuary for wildlife.

[Circ. 1662, Oct. 29, 1947]

Cooperative Conservation Provisions

§ 192.20 *Cooperative or unit plans.*[1] The act authorizes lessees and their representatives to unite with each

[1] For the extension of leases committed to a unit plan, see § 192.122.

other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of such pool, field, or like area is then subject to any cooperative or unit plan of development or operation). The agreement must be for the purpose of more properly conserving the natural resources of any such oil or gas pool, field, or area covered thereby and must be determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary, with the consent of the lessees, is authorized to establish, alter, change or revoke drilling, producing, rental, minimum royalty, and royalty requirements of the leases and to make such regulations with reference to such leases as he may deem necessary or proper to secure the protection of the public interest. All leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall be excepted in determining acreage charges.

[Circ. 1624, Oct. 28, 1946]

§ 192.21 *Application for approval of plan.* The procedure in obtaining approval of a cooperative or unit plan of development including suggested text of an agreement acceptable to the Department is contained in 30 CFR Part 226, "Unit or Cooperative Agreements". All applications to unitize and all documents incident thereto shall be filed in the office of the oil and gas supervisor, Geological Survey, for the region in which the unit area is situated.

[Circ. 1624, Oct.28, 1946]

§ 192.22 *Communitization or drilling agreements.* (a) The Secretary is authorized when separate tracks under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, to approve communitization or drilling agreements for the lease or any portion thereof with other lands, whether or not owned by the United States, when in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

(b) Preliminary requests to communitize separate tracts shall be filed in triplicate with the oil and gas supervisor and executed agreements shall be submitted in sufficient number to permit retention of five copies by the Department after approval.

(c) The agreement shall describe the separate tracts comprising the drilling or spacing unit, shall show the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the United States. The agreement must be signed by or in behalf of all necessary parties and will be effective only after approval by the Secretary of the Interior as provided therein.

[Circ. 1624, Oct. 28, 1946]

§ 192.23 *Approval of operating, drilling or development contracts without regard to acreage limitations.* (a) The authority of the Secretary to approve operating, drilling, or development contracts without regard to acreage limitations ordinarily will be exercised only to permit operators or pipe-line companies to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transportation of oil or gas and to finance the same.

(b) A contract submitted for approval under this provision should be filed with the Director, Bureau of Land Management, together with enough copies to permit retention of 5 copies by the Department after approval. It should be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or field should be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination in accordance with the provisions of the act, and prescribe the conditions on which approval of the contracts is made.

[Circ. 1624, Oct. 28, 1946]

§ 192.24 *Combinations for joint operation of refinery, or for transportation of oil.* Upon obtaining the approval of the Secretary, lessees may combine their interests in leases for the purpose of constructing and carrying on the business of a refinery, or of establishing and constructing as a common carrier a pipe line or lines of railroads to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees, or to increase the acreage which may be acquired or held under the provisions of section 17 of the act relating to competitive leases. An application under this section, together with enough copies to permit retention of 5 copies by the Department after approval, should be filed with the Director, Bureau of Land Management. The application must show a reasonable need for the combination and that it will not result in any concentration of control over the production or sale of oil and gas which would be inconsistent with the anti-monopoly provisions of the law.[2]

[Circ. 1624, Oct. 28, 1946]

§ 192.25 *Subsurface storage of oil or gas.* (a) In order to avoid waste or to promote conservation of natural resources, the Secretary of the Interior, upon application by the interested parties, may authorize the subsurface storage of oil or gas, whether or not produced from federally owned lands, in lands leased or subject to lease under the act. Such authorization will provide for the payment of such storage fee or rental on the stored oil or gas as may be determined adequate in each case, or, in lieu thereof, for a royalty other than that prescribed in the lease when such stored oil or gas is produced in conjunction with oil or gas not previously produced. Any lease used for the storage of oil or gas shall be extended for the period of such storage and so long thereafter as oil or gas not previously produced is produced in paying quantities.

(b) Applications for subsurface storage shall be filed in triplicate with the oil and gas supervisor and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage and all essential information showing the necessity for such project. Enough copies of the final agreement signed by the parties in interest shall be submitted for the approval of the Secretary to permit retention of 5 copies by the Department after approval.

[Circ. 1624, Oct. 28, 1946]

ISSUANCE OF LEASES

§ 192.40 *Classes and term.* All lands subject to disposition under the act which are known or believed to contain oil or gas may be leased by the Secretary of the Interior. When within the known geologic structure of a producing oil or gas field, such land may be leased only by competitive bidding and in units of not exceeding 640 acres to the highest responsible qualified bidder at a royalty of not less than 12½ per cent. Leases for not to exceed 2,560 acres, except where the rule of approximation applies, within a six-mile square, may be issued for all other land subject to the act to the first qualified offeror at a royalty of 12½ percent. All leases, except those issued as renewals of 20-year leases, will be issued for a primary term of five years and so long thereafter as oil or gas is produced in paying quantities.

[Circ. 1773, Nov. 29, 1950]

§ 192.40a *Dating of competitive and noncompetitive oil and gas leases.* All competitive and noncompetitive oil and gas leases, excepting renewal leases, will be dated as of the first day of the month following the date the leases are signed on behalf of the lessor except that where prior written request is made a lease may be dated the first of the month within which it is so signed.

[Circ. 1719, Dec. 29, 1948]

§ 192.41 *Leases for lands wholly or partly within unit areas.* (a) Before issuance of an oil and gas lease for lands within an approved unit agreement, the lease applicant or offeror or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in his lease under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement

[2] Rights-of-way for oil and gas pipe lines may be granted as provided for in §§ 244.48 to 244.52 of this chapter.

is acceptable, he will be permitted to operate independently but will be required to conform to the terms and provisions of the agreement with respect to such operations.

(b) In case an application or offer for a noncompetitive lease embracing lands partly within and partly without the exterior boundaries of a unitized area is found acceptable, separate leases will be issued, one embracing the lands within the unit area, and one the lands outside of such area.

[Circ. 1773, Nov. 29, 1950]

NONCOMPETITIVE LEASES

§ 192.42 *Offer to lease, and issuance of lease.* (a) To obtain a noncompetitive lease, an offer to accept such a lease must be made on Form 4-1158, "Offer and Lease Form", or on unofficial copies of that form in current use, provided that the copies are exact reproductions on one page* of both sides of the official approved one page form, and are without additions, omissions, or other changes or advertising, except that the copies shall include the following statement above the signature of the offeror: "This form is submitted in lieu of official Form 4-1158 and contains all of the provisions thereof as of the date of filing of this offer." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. Form 4-1158, or a valid reproduction of the official form, will also constitute the lease, when signed by the manager of the land office.

(b) Five copies of Form 4-1158, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office, or for land or deposits in states in which there are no land offices, with the Director of the Bureau of Land Management, Washington 25, D. C. If less than five copies are filed, the offeror shall have 15 days from date of the first filing, to file the other required copies, failing in which the offer will be rejected and returned to the offeror with any rental paid and will afford no priority to the offeror. The offer must be filed on a form in effect at the date of filing. For the purpose of this part, an offer will be considered filed when it is received in the proper office during business hours.

(c) The offeror shall mark one of the copies first filed at the top with the word "original". If that is not done, the manager will so mark one copy. If there is any variation in the land descriptions among the five copies, the copy marked "original" shall govern as to the lands covered by the lease.

(d) Each offer must be filled in on a typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney in fact or agent, must describe the lands by legal subdivision, section, township, and range, if the lands are surveyed, and if not surveyed, by a metes and bounds description connected with a corner of the public land surveys by course and distance and must cover only lands entirely within a six-mile square. Each offer must be for an area of not more than 2,560 acres, except where the rule of approximation applies.

(e) Each offer, when first filed, shall be accompanied by:

(1) A filing fee of $10 which will be retained as a service charge even though the offer should be rejected or withdrawn either in whole or in part.

(2) Full payment of the first year's rental based on the total acreage if known, and if not known, on the basis of 40 acres for each smallest legal subdivision.

(3) Evidence of the authority of the attorney in fact or agent to sign the offer and lease, if the offer is signed by such an attorney or agent in behalf of the offeror.

(4) If the offer is signed by an attorney in fact or agent for an individual, a statement over the offeror's signature with respect to citizenship and that the offeror's direct and indirect interests in oil and gas leases, applications and offers therefor in the same state do not exceed 15,360 chargeable acres.

(f) If the offeror is a corporation, the offer must be accompanied by:

(1) A certified copy of the articles of incorporation, or appropriate reference by land office serial number of the record of the Bureau in which such a copy already has been filed, with statement as to any subsequent amendments.

(2) A statement showing the percentage of each class of the corporation's stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be, or who the corporation has reason to believe are, aliens or who have addresses outside of the United States, indicating which classes of stock have voting rights.

(3) A list of the names and addresses of aliens or stockholders living outside of the United States, if more than 10 percent of the voting stock, or of all of the stock, is owned or controlled by, or on behalf of such persons, the list to show the amount and class of stock held by each, and to the extent known to the corporation, or which can be reasonably ascertained by it, the facts as to the citizenship of each such person.

(4) A separate showing as to the citizenship and holdings of any stockholder owning or controlling at least 20 per cent of the stock of the corporation.

(5) A copy either of the minutes of a meeting of the board of directors or of the bylaws indicating that the officer signing the offer to lease has authority to do so, or in lieu of such a copy, a certificate of the secretary or the assistant secretary of the corporation to that effect, over the corporate seal.

(g) An offer will be rejected and returned to the offeror with any rental paid, and it will confer no priority if it is not filled in and accompanied by the payments and documents required by the regulations in Parts 191 and 192 and the instructions printed on the lease form, except that where a corporation has previously filed in any land office any of the documents required by paragraph (f) of this section a reference to that file may be made in lieu of the document together with a statement as to any changes therein since the document was filed.

(h) An offer may not be withdrawn, either in whole or in part, unless the withdrawal is received by the land office before the lease, an amendment of the lease, Form 4-1163, or a separate lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States.

(i) The United States will indicate its acceptance of the lease offer, in whole or in part, and the issuance of the lease by the signature of the appropriate officer thereof in the space provided. An executed copy of the lease will be mailed to the offeror at the address of record.

(j) If any of the land described in item 2 of the offer is open to oil and gas filing when the offer is filed but is omitted from the lease for any reason and thereafter becomes available for leasing to the offeror, the original lease will be amended to include the omitted land unless before the issuance of the amendment to Form 4-1158 the land office receives a withdrawal of the offer as to such land or an election to receive a separate lease in lieu of an amendment. Such election shall consist of a signed statement by the offeror asking for a separate lease accompanied by a new offer on Form 4-1158 describing the remaining lands in his original offer, executed pursuant to this section. The new offer will have the same priority as the old offer. It need not be accompanied by the filing fee. The rental payment held on the original offer will be applied to the new offer. The rental and the lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued. If a separate lease is issued, it will be dated in accordance with § 192.40a.

(k) A transfer of the whole interest in all or any part of the offer may be approved as an incident to the transfer, by assignment or otherwise, of the whole interest in all or any part of the lease. A transfer of an undivided fractional interest in the whole offer may be approved as an incident to the transfer of an undivided fractional interest in the whole lease. An application for approval of a transfer of an offer must include a statement that the transferee agrees to be bound by the offer to the extent that it is transferred and must be signed by the transferee. In other instances transfers of an offer will not be approved prior to the issuance of a lease for the lands or deposits covered by the said transfers.

(l) If an offeror dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, and if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an offer to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application or lease offer

*Page size 8½ x 14 inches.

filed by the deceased, and the following information:

(1) Where probate of the estate has not been completed:

(i) Evidence that the person who as executor or administrator submits the offer and bond form if a bond is required, has authority to act in that capacity and to sign the offer and bond forms.

(ii) A statement over the signature of each heir or devisee, similar to that required of an offeror under paragraph (e) (4) of this section concerning citizenship and holdings.

(iii) Evidence that the heirs or devisees are the heirs or devisees of the deceased offeror and are the only heirs or devisees of the deceased.

(2) Where the executor or administrator has been discharged or no probate proceedings are required:

(i) A certified copy of the will or decree of distribution, if any, and if not, a statement signed by the heirs that they are the only heirs of the offeror and the provisions of the law of the deceased's last domicile showing that no probate is required.

(ii) A statement over the signature of each of the heirs or devisees with reference to holdings and citizenship, similar to that required under paragraph (e) (4) of this section.

[Circ. 1773, Nov. 29, 1950]

§ 192.43 *Opening of lands to further filings, where a noncompetitive oil and gas lease is canceled or relinquished.* Where a noncompetitive lease is canceled or relinquished and the lands involved are not on the known geologic structure of a producing oil or gas field or are not withdrawn from further leasing, immediately upon the notation of the cancellation or relinquishment on the tract book of the land office or on the tract book of the Bureau of Land Management, if there is no land office in the State, the lands shall be open to further oil and gas lease offers. Offers received in the same mail or over the counter at the same time, will be considered simultaneously filed and priority to the extent of the conflicts between them will be determined by a public drawing in accordance with the procedure prescribed in § 295.8 of this chapter.

[Circ. 1773, Nov. 29, 1950]

§ 192.44 *Pending applications.* Applications filed prior to the effective date of the regulations in this part will be processed in accordance with the regulations in effect immediately prior to such date and leases will continue to be issued in such cases on Form 4–213, except:

(a) An applicant may, without losing his priority, file Form 4–1158 "Offer and Lease Form" for the land described in his application, pursuant to § 192.42, but without paying the required filing fee, and

(b) From the date of issuance of the regulations in this part until their effective date, Form 4–1158, or unofficial copies thereof, which are exact reproductions on one page* of both sides of the official approved one page form, if available, may be filed instead of filing new applications under the prior regulations.

[Circ. 1773, Nov. 29, 1950]

COMPETITIVE LEASES

§ 192.50 *Designation and offer of lands for lease by competitive bidding.* The lands and deposits subject to disposition under the act which are within the known geologic structure of a producing oil or gas field will be divided into leasing blocks or tracts in units of not exceeding 640 acres each, which shall be as nearly compact in form as possible, and offered for lease at a royalty and rental to be specified in the notice of sale, to the qualified person who offers the highest bonus by competitive bidding either at public auction, or by sealed bids as provided in the notice of sale.

[Circ. 1624, Oct. 28, 1946]

§ 192.51 *Notice of lease offer.* Notice of the offer of lands for lease will be by publication once a week for five consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated, or in such other publications as the Director, Bureau of Land Management may authorize. The notice will be published at the expense of the Government. A copy of the notice will be posted in the district land office during the period of publication. Such notice will set the day and hour of sale and will state whether the lease is offered by sealed bids or at public auction. If by public auction, the offer will be made at the land office of the district in which the lands are situated, or at such other place as may be fixed in the notice. If by sealed bids, full information will be given as to how and when bids are to be submitted. All bidders are warned against violation of the provisions of 18 U. S. C. 1860, prohibiting unlawful combination or intimidation of bidders.

[Circ. 1624, Oct. 28, 1946]

§ 192.52 *Qualifications of successful bidder.* The successful bidder at a sale by public auction must on the day of the sale, deposit with the manager of the land office or other officer conducting the sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one-fifth of the amount bid by him and a statement over the bidder's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 192.42 (e) (4). If the successful bidder is a corporation, it must also file a statement similar to that required by § 192.42 (b).

[Circ. 1773, Nov. 29, 1950]

§ 192.53 *Award of lease.* Following receipt of the report of the auction from the manager, or the opening of the sealed bids, the Director, subject to his right to reject any or all bids, will award the lease to the successful bidder. Notice of his action will be forthwith transmitted to the interested parties through the local office. If the lease be awarded, three copies of the lease will be sent to the successful bidder and he will be required within 30 days from receipt thereof to execute them, pay the balance of his bonus bid, the first year's rental, and file a bond as required in § 192.100. If any bid be rejected, the deposit will be returned. If a bidder, after being awarded a lease, fails to execute it or otherwise comply with the applicable regulations, his deposit will be forfeited and disposed of as other receipts under this act. If the lease awarded to the successful bidder is executed by an attorney acting in behalf of the bidder, the lease must be accompanied by evidence that the bidder authorized the attorney to execute the lease.

If two or more units are awarded to any bidder, such units, where the acreage does not exceed 640 acres, may be included in a single lease if circumstances warrant.

[Circ. 1624, Oct. 28, 1946; Circ. 1719, Dec. 29, 1948]

§ 192.54 *Form of lease.* Competitive leases will be issued on Form 4–213 and the rentals and royalties payable thereunder will be set forth in Schedule "B" affixed thereto and made a part thereof.

[Circ. 1624, Oct. 28, 1946]

EXCHANGE AND RENEWAL LEASES

§ 192.60 *Application to exchange lease for a new lease.* Any lease which issued for a term of 20 years, or any renewal thereof, or which issued in exchange for a 20-year lease prior to August 8, 1946, may be exchanged for a new lease. Such new lease will be issued for a primary term of 5 years and so long thereafter as oil or gas is produced in paying quantities and will contain the rental and royalty rates prescribed in §§ 192.80, 192.81 and 192.82. An application to exchange a lease for a new lease should be filed in triplicate by the lessee with the manager of the appropriate district land office and must show full compliance by the applicant with the terms of the lease and applicable regulations.

[Circ. 1624, Oct. 28, 1946]

§ 192.61 *Application for renewal.* (a) Twenty year leases or renewals thereof may be renewed for successive terms of 10 years at the rental and royalty rates specified for such renewal leases in §§ 192.80, 192.81 and 192.82. An application to renew should be filed in triplicate with the manager of the district land office in which the leased land is located or if in a State in which there is no district land office, in the Bureau of Land Management at least 90 days, but not more than six months, prior to the expiration of its term.

*Page size 8½ x 14 inches.

Such application should be made by the record title holder or holders of the lease and may be joined in or consented to by the operator of record. The application should show whether all moneys due the United States have been paid and whether operations under the lease have been conducted in accordance with the regulations of the Department.

(b) The applicant or his operator shall furnish in triplicate with the application for renewal, copies of all agreements not theretofore filed providing for overriding royalties or other payments out of production from the lease which will be in existence as of the date of its expiration. When such payments, including overriding royalties, are in excess of 5 per cent of gross production a detailed statement of the income from and costs of operation of the lease for the twelve month period immediately preceding the month in which the application for renewal is filed must also be furnished.

[Circ. 1624, Oct. 28, 1946]

§ 192.62 *Action on application.* If the outstanding obligations in excess of five per cent of gross production payable from production do not constitute a burden on the lease prejudicial to the interests of the United States, they will not be considered a bar to its renewal but any lease that may be issued will be upon the condition, to be incorporated in the lease, that if and when the costs of operations, including the payment of overriding royalties or payments out of production, shall be determined by the Director, Bureau of Land Management, to constitute such a burden such royalties and payments shall be reduced to not more than 5 percent of the value of the production. If no objection to the renewal of the lease appears, copies of a renewal lease, in triplicate, dated the first day of the month in which the original lease terminated, will be forwarded to the lessee for execution. If upon receipt of the executed lease forms and a satisfactory lease bond, the lease is executed, one copy thereof will be delivered to the lessee.

If a determination is made that overriding royalties and payments out of production in excess of 5 percent of gross production constitute a burden on lease operations to the extent that proper and timely development will be retarded, or continued operation of the lease impaired, or premature abandonment of the wells caused, the lease application will be suspended and the parties in interest will be offered an opportunity to reduce the excessive overriding royalties or other payments out of production to not more than 5 percent of the value of the production. If the holders of outstanding overriding royalty or other interests payable out of production, the operator, and the lessee are unable to enter into a mutually fair and equitable agreement, any of the parties may apply for a hearing at which all interested parties may be heard and written statements presented. Thereupon a final decision will be rendered by the Department outlining the conditions acceptable to it as a basis for a fair and reasonable adjustment of the excessive overriding royalties and other payments out of production, and an opportunity will be afforded within a fixed period of time to submit proof that such adjustment has been effected. Upon failure to submit such proof within the time so fixed, the application for renewal will be denied.

[Circ. 1624, Oct. 28, 1946]

§ 192.63 *Form of lease.* Renewal and exchange leases will be issued on Form 4-213. The rentals and royalties payable thereunder will be set out on Schedule C or D as may be appropriate, which schedule is attached thereto and made a part thereof.

[Circ. 1624, Oct, 28, 1946]

LEASES ON PATENTED OR ENTERED LAND

§ 192.70 *Preference right of patentee or entryman to a lease.* (a) An entryman or patentee who made entry prior to February 25, 1920, or an assignee of such entryman or a vendee of such patentee if the assignment or conveyance was made prior to January 1, 1918, for lands not withdrawn or classified or known to be valuable for oil and gas at date of entry shall be entitled, if the entry or patent is impressed with a reservation of the oil or gas, to a preference right to a lease for the land. A settler whose settlement was made prior to February 25, 1920, on land in the same status but which has since been withdrawn, classified, or is known to contain oil or gas, also has such a preference right.

[Circ. 1624, Oct. 28, 1946]

(b) Any offeror for a lease to lands owned, entered or settled upon as stated above must notify the person entitled to a preference right of the filing of the offer and of the latter's preference right for 30 days after notice to apply for a lease. If the party entitled to a preference right files a proper offer within the 30-day period, he will be awarded a lease; but if he fails to do so, his rights will be considered to have terminated.

[Circ. 1773, Nov. 29, 1950]

§ 192.71 *Lands in entries or claims not impressed with a reservation of oil and gas.* (a) Where an offer is filed to lease lands noncompetitively in an entry or settlement claim not impressed with an oil or gas reservation, the offer will be rejected unless it is found that the land is prospectively valuable for oil or gas. An offeror for a lease for land already embraced in a nonmineral entry without a reservation of the mineral, and likewise a nonmineral entryman or settler who is contending that the land is nonmineral in character should submit with their respective offer and application, showings of as complete and accurate geologic data as may be procurable, preferably the reports and opinions of qualified experts.

(b) Should the land be found to be prospectively valuable for oil or gas, the entryman or settler will be required to consent to a reservation of the oil or gas to the United States or to contest the mineral finding. If he does neither, the entry will be canceled or his settlement rights denied. If he consents, or contests the finding and is unsuccessful, a lease will be granted to the offeror, unless the entryman or settler has a preference right, but if the entryman or settler prevails in a contest, the offer will be rejected.

[Circ. 1773, Nov. 29, 1950]

§ 192.72 *Showing required of oil and gas offerors for unsurveyed lands.* Every offeror for oil and gas lease for unsurveyed lands, must state in his offer that there are no settlers upon the land, or if there be settlers, give the name and post office address of each and a description of the lands claimed, by metes and bounds and approximate legal subdivisions.

[Circ. 1773, Nov. 29, 1950]

RENTALS AND ROYALTIES

§ 192.80 *Rentals.* Rentals shall be payable in advance at the following rates:

(a) On noncompetitive leases issued under section 17 of the act, wholly outside of the known geologic structure of a producing oil or gas field:

(1) For the first lease year, 50 cents per acre or fraction thereof, except as to Alaska where the rate shall be 25 cents per acre or fraction thereof.

(2) For the second and third lease years, no rental.

(3) For the fourth and fifth years, 25 cents per acre or fraction thereof.

(4) For the sixth and each succeeding year, 50 cents per acre or fraction thereof, except as to Alaska where the rate shall be 25 cents per acre or fraction thereof.

(b) On leases wholly or partly within the known geologic structure of a producing oil or gas field:

(1) If issued noncompetitively under section 17 of the act, and not committed to a cooperative or unit plan that contains a general provision for allocation of production, beginning with the first lease year after the expiration of thirty days notice to the lessee that all or part of the land is included in such a structure and for each year thereafter, prior to a discovery of oil or gas on the leased lands, rental of $1.00 per acre or fraction thereof.

(2) If issued noncompetitively under section 17 of the act, and committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, the rental prescribed for the respective lease years in paragraph (a) of this section, shall apply to the acreage not within a participating area, except that the rental for the second and third lease years for such acreage shall be 25 cents per acre or fraction thereof.

(3) If issued competitively, an annual rental, prior to a discovery on the leased lands, of $1.00 per acre or fraction thereof, unless a different rate of rental is prescribed in the lease.

(c) On leases issued in any other way, an annual rental of $1.00 per acre or fraction thereof.

[Circ. 1773, Nov. 29, 1950]

§ 192.81 *Minimum royalty.* On leases issued on or after August 8, 1946, and on those issued prior thereto if the lessee files an election under section 15 of the act of August 8, 1946, a minimum royalty of $1 per acre in lieu of rental, shall be payable at the expiration of each lease year after a discovery has been made on the leased lands, commencing with the lease year, beginning on or after the date of such discovery, except that on unitized leases the minimum royalty shall be payable only on the participating acreage. If the actual royalty paid during any year aggregates less than $1 per acre the lessee must pay the difference at the expiration of the lease year

[Circ. 1624, Oct. 28, 1946]

§ 192.82 *Royalty on production.* (a) On and after August 8, 1946, the following royalty rates shall be paid on the production removed or sold from leases:

[Circ. 1624, Oct. 28, 1946]

(1) 12½ percent on noncompetitive leases thereafter issued under section 17 of the act; *Provided, however,* That any holder of a lease for lands in Alaska who shall drill and make the first discovery of oil or gas in commercial quantities in any geologic structure shall pay a royalty on production under the lease of 5 percent for 10 years following the date of discovery, and thereafter the royalty shall be 12½ percent. If such lease is committed to an approved unit or cooperative plan, the 5 percent rate herein provided shall, for the purpose of computing royalty due the United States, inure to the benefit of all committed land within the participating area established by reason of such discovery.

[Circ. 1773, Nov. 29, 1950]

(2) Such rates as are prescribed in the notice of sale in the case of all leases thereafter issued by competitive bidding.

(3) 12½ percent on all leases theretofore issued, except competitive leases, and on exchange and renewal leases thereafter issued, as to production from

(i) Land determined by the Director, Geological Survey, not to be within the productive limits of any oil or gas deposit on August 8, 1946.

(ii) An oil or gas deposit which was discovered after May 27, 1941, by a well or wells drilled within the boundaries of the lease and which is determined by the Director, Geological Survey, to be a new deposit.

(iii) Or allocated to a lease pursuant to an approved unit or cooperative agreement from an oil or gas deposit which was discovered on unitized land after May 27, 1941, and determined by the Director, Geological Survey, to be a new deposit, but only if at the time of discovery the lease or, in the case of an exchange lease, the lease for which it was exchanged was committed to the agreement or was included in a duly executed and filed application for approval of the agreement.

(4) From lands within exchange and renewal leases not subject to subparagraph (3) of this paragraph the rate of royalty shall be identical to that prescribed in the prior lease, except that for a lease issued in exchange for or as a renewal of a lease carrying a flat royalty rate of 5 percent to the United States the royalty shall be as follows:

(i) When the average production of oil for the calendar month in barrels per well per day is:

Not over 110 the royalty shall be 12½%.
Over 110 but not over 130 the royalty shall be 18% of all production.
Over 130 but not over 150 the royalty shall be 19% of all production.
Over 150 but not over 200 the royalty shall be 20% of all production.
Over 200 but not over 250 the royalty shall be 21% of all production.
Over 250 but not over 300 the royalty shall be 22% of all production.
Over 300 but not over 350 the royalty shall be 23% of all production.
Over 350 but not over 400 the royalty shall be 24% of all production.
Over 400 the royalty shall be 25% of all production.

(ii) On gas, including inflammable gas, helium, carbon dioxide, and all other natural gases and mixtures thereof, and on natural or casinghead gasoline and other liquid products obtained from gas; when the average production of gas per well per day for the calendar month does not exceed 5,000,000 cubic feet, 12½ percent; and when the production of gas exceeds 5,000,000 cubic feet, 16⅔ percent of the amount or value of the gas and liquid products produced.

(5) In the case of competitive leases, and other leases theretofore issued, insofar as subparagraphs (3) and (4) of this paragraph are inapplicable, the rates specified in the lease.

(b) The average production per well per day for oil and for gas shall be determined pursuant to 30 CFR Part 221, "Oil and Gas Operating Regulations."

(c) In determining the amount or value of gas and liquid products produced, the amount or value shall be net after an allowance for the cost of manufacture. The allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only on approval by the Secretary of the Interior.

(d) The Secretary of the Interior may establish reasonable values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other liquid products obtained from gas, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters. In appropriate cases this will be done after notice to the parties and opportunity to be heard.

[Circ. 1624, Oct. 28, 1946]

§ 192.83 *Limitation of overriding royalties.* Any agreement to create overriding royalties or payments out of the production of any lease which, when added to overriding royalties or payments out of production previously created and to the royalty payable to the United States, aggregate in excess of 17½ percent shall be deemed a violation of the terms of the lease unless such agreement expressly provides that the obligation to pay such excess overriding royalty or payments out of production shall be suspended when the average production per well per day averaged on the monthly basis is (a) as to oil, 15 barrels or less and (b) as to gas, 500,000 cubic feet or less. The limitations in this section will apply separately to any zone or portion of a lease segregated for computing Government royalty.

[Circ. 1769, Oct. 13, 1950]

BONDS

§ 192.100 *Amount of bonds required of lessee.* (a) The successful bidder for a competitive lease prior to the issuance of the lease must furnish a corporate surety bond in the sum of at least double the amount of the $1 per acre annual rental but in no case less than $1,000 nor more than $5,000, conditioned on compliance with all the terms of the lease, and such a bond must also be filed when all or any part of the land in a lease issued noncompetitively is included within the limits of a known geologic structure of a producing oil or gas field.

(b) Until a general lease bond is filed a noncompetitive lessee will be required to furnish and maintain a bond in the penal sum of not less than $1,000 in those cases in which a bond is required by law for the protection of the owners of surface rights. In all other cases where a bond is not otherwise required, a $1,000 bond must be filed for compliance with the lease obligations not less than 90 days before the due date of the next unpaid annual rental, but this requirement may be successively dispensed with by payment of each successive annual rental not less than 90 days prior to its due date.

(c) All leases shall provide that where a $5,000 bond is not already being maintained a general lease bond in the penal sum of $5,000 conditioned upon compliance with all lease terms covering the entire leasehold, shall be furnished by

the lessee prior to the beginning of drilling operations. An operator or, if there is more than one operator covering different portions of the lease, each operator may furnish a $5,000 general lease bond in his own name as principal on the bond in lieu of the lessee. Where there are one or more operator's bonds affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for the entire leasehold. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond. An operator's bond will not be accepted unless the operator holds an operating agreement which has been approved by the Department or has pending an operating agreement in proper condition for approval. The mere designation as operator will not suffice.

(d) Bonds shall be either corporate surety bonds or personal bonds except that bonds with individual sureties as provided in § 191.14 of this chapter may be furnished for the protection of the entryman or owner of surface rights. Personal bonds must be accompanied by a deposit of negotiable Federal securities in a sum equal at their par value to the amount of the bond and by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the conditions of the lease bond.

[Circ. 1624, Oct. 28, 1946; Circ. 1719, Dec. 29, 1948]

§ 192.101 *Form of bonds.* Bonds furnished by lessees will be on Form 4–208g; those furnished by operators on Form 4–238.

[Circ. 1624, Oct. 28, 1946]

CONTINUATION OR EXTENSION OF LEASE[3]

§ 192.120 *Single extension as to lands not in a producing field.* The record title holder of any noncompetitive lease, as to which a notice of election has been filed pursuant to section 15 of the act of August 8, 1946, or which was issued after the passage of that act, maintained in compliance with the law and the regulations of this part, by filing his application therefor within the period of 90 days prior to the expiration date of the lease, may obtain a single extension of the primary term of the lease for an additional five years, unless then otherwise provided by law, as to all of the leased lands or any legal subdivision thereof which, on the expiration date of the lease, are not within the known geologic structure of any producing oil or gas field or have not been withdrawn from leasing. A withdrawal, however, will prevent an extension only (a) if notice thereof was mailed to the lessee by registered mail at least 90 days prior to the expiration date of the lease and (b) if actual drilling operations on the leased lands were not commenced prior to the effective date of such withdrawal, or, if so commenced, have not been diligently prosecuted until and including such expiration date.

[Circ. 1624, Oct. 28, 1946]

§ 192.121 *Continuation of lease as to lands within producing fields and on termination of production.* (a) Any noncompetitive lease or portion thereof which is not subject to a single extension of five years solely because the lands are within the known geologic structure of a producing oil or gas field at the date of expiration of the primary term of the lease shall continue in effect for a period of two years from the expiration date of the primary term of the lease where drilling operations are being diligently prosecuted on such date and, upon discovery, for so long thereafter as oil or gas is produced in paying quantities.

(b) Any lease issued under the act upon which production is had during its primary term or any extensions thereof, shall not terminate when the production ceases if diligent drilling operations are in progress on the leased land during the period of nonproduction.

[Circ. 1624, Oct. 28, 1946]

§ 192.122 *Extension for term of cooperative or unit plan.* (a) Any lease issued for a term of 20 years, or any renewal thereof, committed to a cooperative or unit plan approved by the Secretary of the Interior, or any portion of such lease so committed, shall continue in force so long as committed to the plan, beyond the expiration date of its primary term. This provision does not apply to that portion of any such lease which is not included in the cooperative or unit plan unless the lease was so committed prior to August 8, 1946.

(b) Any other lease issued under any section of the act committed to any such plan that contains a general provision for the allocation of oil or gas shall continue in effect as to the land committed so long as the lease remains subject to the plan, provided oil or gas is discovered under the plan prior to the expiration date of the primary term of such lease.

[Circ. 1624, Oct. 28, 1946]

§ 192.123 *Extension of lease eliminated from cooperative or unit plan or communitization or drilling agreement and of lease in effect at termination of such plan or agreement.* Any lease or portion thereof eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities.

[Circ. 1624, Oct. 28, 1946]

§ 192.130 *Preference right to a new lease.* (a) Upon the expiration of its five year term the record title holder of a noncompetitive lease issued prior to August 8, 1946 and maintained in good standing, who has not filed a notice of election pursuant to section 15 of the act of August 8, 1946, may file an offer on Form 4–1158 for a new lease for the same land pursuant to the provisions of section 1 of the act of July 29, 1942 (56 Stat. 726, 30 U. S. C. sec. 226b), provided the leased land is not then within the known geologic structure of a producing oil or gas field. Any lease issued under this section will be for a period of five years and so long thereafter as oil or gas is produced as provided in section 17 of the act and will be subject to the rules and regulations then in force.

(b) To obtain such a new lease, the lessee must, within the period beginning 90 days prior to the date of expiration of the lease and ending on the date of expiration, submit an offer on Form 4–1158 in accordance with § 192.42, accompanied by a proper filing fee and the first year's rental.

[Circ. 1773, Nov. 29, 1950]

ASSIGNMENTS OR TRANSFERS

§ 192.140 *Assignments or transfers of leases or interests therein.* Leases may be assigned or subleased as to all or part of the leased acreage and as to either a divided or undivided interest therein to any person or persons qualified to hold a lease. Subject to final approval by the Director, Bureau of Land Management, assignments or subleases shall take effect as of the first day of the lease month following the date of filing in the proper land office of all the papers required by §§ 192.141 and 192.142. No assignment will be approved if the assignee is not qualified to take and hold a lease or if his bond is insufficient. A minor, except a minor heir or devisee of a lessee, is not qualified to hold a lease and an assignment to a minor will not be approved. An assignment of a separate zone or deposit or of a part of a legal subdivision will not be approved unless the necessity therefor is established by clear and convincing evidence.

[Circ. 1624, Oct. 28, 1946; Circ. 1719, Dec. 29, 1948]

§ 192.141 *Requirements for filing of transfers.* (a) All instruments of transfer of a lease or of an interest therein, including assignments of record title, working, or royalty interests, operating agreements and subleases, must be filed for approval within 90 days from the date of final execution and must contain all of the terms and conditions agreed upon by the parties thereto, together with a statement over the transferee's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 192.42 (e) (4) and (f). An application for approval of any such instrument must be accompanied by a fee of $10, and an

[3] For extension of lease (a) because of suspension of operations and production, see § 191.26 of this chapter; (b) by payment of compensatory royalty, see § 192.8; (c) committed to communitization or drilling agreement, see § 192.22; (d) used for subsurface storage, see § 192.25; (e) segregated by assignment, see § 192.144.

application not accompanied by payment of such a fee will be rejected by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

[Circ. 1773, Nov. 29, 1950]

(b) Where an attorney in fact, in behalf of the holder of a lease, operating agreement or of a royalty interest in a producing lease, signs an assignment of the agreement, lease or interest, or signs the application for approval, there must be furnished evidence of the authority of the attorney to execute the assignment or application.

(c) If a bond is necessary, it must be furnished. Where an assignment does not create separate leases, the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. If any overriding royalty or payments out of production are created which are not shown in the instrument or agreement, a statement must be submitted describing them. Assignments of record title interests must be filed in triplicate. A single executed copy of all other instruments of transfer, or of an operating agreement, is sufficient.

[Circ. 1719, Dec. 29, 1948]

(d) In order for the heirs or devisees of a deceased holder of a lease, an operating agreement, or a royalty interest in a producing lease, to be recognized by the Department as the holder of the lease, agreement, or interest, there must be furnished the appropriate showing required under § 192.42 (1).

[Circ. 1773, Nov. 29, 1950]

(e) The assignor or sublessor and his surety will continue to be responsible for the performance of any obligation under the lease until the assignment or sublease is approved. If the assignment or transfer is not approved, their obligations to the United States shall continue as though no such assignment or transfer had been filed for approval. After approval the assignee or sublessee and his surety will be responsible for the performance of all lease obligations notwithstanding any terms in the assignment or sublease to the contrary.

(f) Unless the lease account is in good standing as to the area covered by the assignment when the assignment and bond are filed, or is placed in good standing before the assignment is reached for action the lease will be cancelled as provided in § 192.161.

[Circ. 1624a, June 6, 1947]

§ 192.142 *Separate assignments required for transfer of record title to leases.* A separate instrument of assignment must be filed for each oil and gas lease when transfers involve record titles. When transfers to the same person, association, or corporation, involving more than one oil and gas lease are filed at the same time for approval, one request for approval and one showing as to the qualifications of the assignee will be sufficient.

[Circ. 1624, Oct. 28, 1946]

§ 192.143 *Effect of assignment of particular tract.* When an assignment is made of all or part of the record title to a portion of the acreage in a lease, the assigned acreage becomes segregated into a separate and distinct lease. The assignee becomes a lessee of the Government as to the segregated tract and is bound by the terms of the lease as though he had obtained the lease through an application filed in his own name and the assignment after its approval will be the basis of a new record.

[Circ. 1624, Oct. 28, 1946]

§ 192.144 *Extension of leases segregated by assignment.* (a) Any lease segregated by assignment, including the retained portion, shall continue in effect for the primary term of the original lease, or for two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the original lease, whichever is the longer period.

(b) Undeveloped parts of leases assigned out of leases which are in their extended term because of production shall continue in effect for two years and so long thereafter as oil or gas is produced in paying quantities.

[Circ. 1624, Oct. 28, 1946]

§ 192.145 *Royalty interests in oil and gas leases and assignments thereof.* Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of the first sentence of section 27 of the act. Assignments of such interest must be filed for record purposes in the appropriate district land offices accompanied by a showing by the assignees as to their citizenship and holdings in other oil and gas leases in the state. All assignments of royalty interests must be filed for the record, but those of 1 percent or less will be approved only upon specific request and then only after discovery. Any assignment of 1 percent or less if filed for record will be deemed to be valid whether formally approved or not.

[Circ. 1624a, June 6, 1947]

TERMINATION OF LEASES

§ 192.160 *Relinquishments of leases or portions thereof.* A lease or any legal subdivision thereof may be surrendered by the record title holder by filing a written relinquishment, in triplicate, in the proper land office. A relinquishment shall take effect on the date it is filed subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to place all wells on the land to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid.

[Circ. 1624, Oct. 28, 1946]

§ 192.161 *Cancellation of lease.* Any lease not known to contain valuable deposits of oil or gas may be canceled by the Secretary of the Interior, after giving notice in accordance with section 31 of the act, whenever the lessee fails to comply with any of the provisions of the act, of the regulations issued thereunder, or of the lease, if such default continues for the period prescribed in that section after service of notice thereof. Leases known to contain valuable deposits of oil or gas may be canceled only by judicial proceedings in the manner provided in sections 27 and 31 of the act.

[Circ. 1624, Oct. 28, 1946]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1783]

PART 141—COLOR-OF-TITLE AND RIPARIAN CLAIMS APPLICABLE TO PARTICULAR STATES

COLOR-OF-TITLE CLAIMS, MICHIGAN

The following text is added to Part 141:

§ 141.27 *Statutory authority; applications; reservation of coal and other minerals not required; reservation of fissionable materials required.* (a) The act of June 30, 1948 (62 Stat. 1171) directs the Secretary of the Interior to issue a patent to a tract or tracts of public land in Monroe County, Michigan, not exceeding in the aggregate 160 acres, upon payment for the land at the rate of $1.25 per acre, where within five years after the passage of the act it is shown to his satisfaction that the land has been held in good faith and in peaceable, adverse possession by a citizen of the United States, his ancestors or grantors, for more than 20 years prior to the approval of the act under claim or color-of-title, and where improvements have been placed on the land or some part thereof has been reduced to cultivation. The act provides that the term "citizen" as used therein shall be held to include a corporation organized under the laws of the United States or any State or Territory thereof.

(b) Applications under the act of June 30, 1948, will be filed and processed in accordance with the regulations contained in Part 140 of this chapter under the color-of-title act of December 22, 1928 (45 Stat. 1069; 43 U. S. C. 1068, 1068a), so far as those regulations do not conflict with the provisions of the act of June 30, 1948.

(c) The act of June 30, 1948, unlike the color-of-title act of December 22, 1928, does not authorize the reservation to the United States of the coal and other mineral deposits in the land and no reservation of such deposits will be made.

(d) The provision contained in section 5 (b) (7) of the Atomic Energy Act of August 1, 1946 (60 Stat. 760; 42 U. S. C. 1805 (b) (7)) for the reservation of fissionable materials to the United States in patents for public lands issued after August 1, 1946, was made "subject to valid claims, rights, or privileges existing on August 1, 1946." As this act was passed prior to the enactment of the color of title act of June 30, 1948, a reservation of fissionable materials in accordance with § 102.43 of this chapter will be made in every patent issued under the act of June 30, 1948.

(R. S. 2478; 43 U. S. C. 1201)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JANUARY 12, 1951.

[F. R. Doc. 51-815; Filed, Jan. 17, 1951; 8:45 a. m.]

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The following text is added to Part 141:

§ 141.27 *Statutory authority; applications; reservation of coal and other minerals not required; reservation of fissionable materials required.* (a) The act of June 30, 1948 (62 Stat. 1171) directs the Secretary of the Interior to issue a patent to a tract or tracts of public land in Monroe County, Michigan, not exceeding in the aggregate 160 acres, upon payment for the land at the rate of $1.25 per acre, where within five years after the passage of the act it is shown to his satisfaction that the land has been held in good faith and in peaceable, adverse possession by a citizen of the United States, his ancestors or grantors, for more than 20 years prior to the approval of the act under claim or color-of-title, and where improvements have been placed on the land or some part thereof has been reduced to cultivation. The act provides that the term "citizen" as used therein shall be held to include a corporation organized under the laws of the United States or any State or Territory thereof.

(b) Applications under the act of June 30, 1948, will be filed and processed in accordance with the regulations contained in Part 140 of this chapter under the color-of-title act of December 22, 1928 (45 Stat. 1069; 43 U. S. C. 1068, 1068a), so far as those regulations do not conflict with the provisions of the act of June 30, 1948.

(c) The act of June 30, 1948, unlike the color-of-title act of December 22, 1928, does not authorize the reservation to the United States of the coal and other mineral deposits in the land and no reservation of such deposits will be made.

(d) The provision contained in section 5 (b) (7) of the Atomic Energy Act of August 1, 1946 (60 Stat. 760; 42 U. S. C. 1805 (b) (7)) for the reservation of fissionable materials to the United States in patents for public lands issued after August 1, 1946, was made "subject to valid claims, rights, or privileges existing on August 1, 1946." As this act was passed prior to the enactment of the color of title act of June 30, 1948, a reservation of fissionable materials in accordance with § 102.43 of this chapter will be made in every patent issued under the act of June 30, 1948.

(R. S. 2478; 43 U. S. C. 1201)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JANUARY 12, 1951.

[F. R. Doc. 51-815; Filed, Jan. 17, 1951; 8:45 a. m.]

Published in 16 F.R. 461, of January 18, 1951

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

(Circular 1749)

PART 141—COAL-OR-LITE GRANT AND RIGHTS OF CLAIMS APPLICABLE TO PARTICULAR STATES

COLOR-OR-LITE GRANT, MICHIGAN

The following text is added to Part 141:

§ 141.27 Statutory authority, appropriations; reservation of coal and other minerals not reserved; reservation of minerals materials reserved. (a) The act of June 30, 1948 (62 Stat. 1171) directs the Secretary of the Interior to issue a patent in a tract or tracts of public land in Monroe County, Michigan, not exceeding in the aggregate 80 acres, upon payment for the land at the rate of $1.50 per acre, where within five years after the passage of the act it is shown to his satisfaction that the land has been held in good faith and in possession, adverse possession by a citizen of the United States, his ancestors or grantors, for more than 30 years prior to the approval of the act under claim or color-of-title, and where improvements have been placed on the land or some part thereof has been reclaimed to cultivation. The act provides that the term "citizen" as used therein shall be held to include a corporation organized under the laws of the United States or any State or Territory thereof.

(b) Applications under the act of June 30, 1948, will be filed and processed in accordance with the regulations contained in part 141 of this chapter under the color-of-title act of December 22, 1928 (45 Stat. 1069, 43 U. S. C. 1068, 1068a); so far as these regulations do not conflict with the provisions of the act of June 30, 1948.

Published in 19 F.R. 463, of January 14, 1954

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Washington Division & Branch Chiefs

(c) The act of June 30, 1948, unlike the color-of-title act of December 22, 1928, does not authorize the reservation to the United States of the coal and other mineral deposits in the land and the reservation of such deposits will be made.

(d) The provision contained in section 8 (b) (7) of the Atomic Energy Act of August 1, 1946 (60 Stat. 769; 42 U. S. C. 1808 (b) (7)) for the reservation of fissionable materials to the United States in patents for public lands issued after August 1, 1946, was made "subject to valid claims, rights, or privileges existing on August 1, 1946." As this act was passed prior to the consummation of the color of title act of June 30, 1948, a reservation of fissionable materials in accordance with § 162.23 of this chapter will be made in every patent issued under the act of June 30, 1948.

(R. S. 2478; 43 U. S. C. 1201)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JANUARY 12, 1954.

[F. R. Doc. 54-463; Filed, Jan. 13, 1954; 8:45 a. m.]

CIRCULAR 1784

PART 69 - Mineral Lands; General Mining Regulations - Alaska

Obsolete - See Circular 1852

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

Circular No. 1784

Part 69—Mineral Lands; General Mining Regulations

CROSS REFERENCES: For mineral lands, general mining regulations, see Part 185 of this chapter. For surveys in Alaska, see Part 78 of this chapter. For surveys and resurveys, general, see Parts 280, 281 of this chapter.

LOCATION AND ENTRY OF MINERAL LANDS IN ALASKA

AUTHORITY: §§ 69.1 to 69.10 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 69.1 to 69.10 contained in Circular 491, Feb. 24, 1928, except as noted following sections affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

§ 69.1 *Laws relating to mining claims extended to Alaska.* The laws of the United States relating to mining claims were extended to Alaska by section 8 of the act of May 17, 1884 (23 Stat. 26), and sections 15, 16, and 26 of the act of June 6, 1900 (31 Stat. 327–329; 48 U. S. C. 119, 120, 381–383), again, in terms, extended the mining laws of the United States and all rights incident thereto, to the Territory, with certain further provisions with respect to the acquisition of claims thereunder.[2]

§ 69.2 *Law in respect to placer claims.* (a) The law in respect to placer claims in Alaska was modified and amended by the act of August 1, 1912 (37 Stat. 242), and section 4 of that act was amended by the act of March 3, 1925 (43 Stat. 1118).

(b) By the act of May 4, 1934 (48 Stat. 663; 48 U. S. C. 381a)[3] the acts of August 1, 1912, and March 3, 1925, were repealed and the general mining laws of the United States applicable to placer mining claims were declared to be in full force and effect in the Territory.

§ 69.3 *Annual assessment work on mining claims and proof thereof.* Under the act of March 2, 1907 (34 Stat. 1243; 48 U. S. C. 384, 385),[4] an unpatented mining claim in Alaska becomes forfeited for failure to complete the required assessment work during any assessment period, the act containing no provision for the protection or preservation of such claim through resumption of work.

§ 69.4 *Identification of lands.* A statement as to descriptions should be incorporated in field notes of survey not tied to a corner of the public survey, and in applications for patent based thereon.[5]

§ 69.5 *Plats and field notes of survey.* Copies of the plats and field notes of survey in mining cases will be made and disposed of in accordance with instructions given in § 78.8 of this chapter.

§ 69.6 *Rates for newspaper publications.* Section 2334 of the Revised Statutes (30 U. S. C. 39) provides for the appointment of surveyors to survey mining claims, and authorizes the Director of the Bureau of Land Management to establish the rates to be charged for surveys and for newspaper publications in mining cases. Under this authority of law, the following rates have been established as the maximum charges for newspaper publications:

(a) The charge for the publication of notice of application for patent in a mining case in all districts shall not exceed the legal rates allowed by the laws of Alaska for the publication of legal notices wherein the notice is published, and in no case shall the charge exceed $9.40 for each 10 lines of space occupied. Such charge shall be accepted as full payment for the publication for the entire period required by law.

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[1] The general mining regulations contained in Part 185, as modified and supplemented by the regulations in this part, are effective in the Territory of Alaska. For laws relating to mining enacted by the Territory, see Session Laws of Alaska, March 14, 1935, Ch. 76, and March 9, 1939, Ch. 77.

[2] See also amendatory acts of May 31, 1938 and August 8, 1947 (52 Stat. 588, 61 Stat. 916; 48 U. S. C. 381).

[3] Sec. 3 of the act of May 4, 1934 (48 Stat. 663; 48 U. S. C. 381a) provided: "This Act shall take effect thirty days subsequent to the date of convening of the first regular session of the Alaska Territorial Legislature which is held after the passage of this Act." The next legislature convened on the second Monday of January, 1935.

[4] The act of March 2, 1907 (34 Stat. 1243; 48 U. S. C. 384, 385), prescribes the requirements as to annual assessment work on mining claims in Alaska and the manner of making proof thereof.

[5] The field notes of survey of all claims within the Territory of Alaska, and all applications for patent based thereon, where the survey is not tied to a corner of the public survey, shall contain a description of the location or mineral monument to which the survey is tied by giving its latitude and longitude and its position with reference to rivers, creeks, mountains, or mountain peaks, towns or other prominent topographical points or natural objects or monuments, giving the distances and directions as nearly accurate as possible, especially with reference to any well-known trail to a town or mining camp or to a river or mountain appearing on the map of Alaska, which description shall appear regardless of whether or not the survey be tied to an existing monument or to a monument established by the surveyor when making the survey in accordance with existing regulations with reference to the establishment of such monuments. The description of such monument shall appear in a paragraph separate from the description of the courses and distances of the survey.

(b) It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and the said rates are established upon the understanding that the notices are to be set in the usual body type used for legal notices.

(c) Further information relative to publication and a sample of advertisement set up in accordance with Government requirements is given in § 185.88 of this chapter.

[Circ. 491, Feb. 24, 1928, as amended by Circ 1612, 11 F. R. 1820]

§ 69.7 *Abstract of title.* In the Territory of Alaska, the application for patent will be received and filed and the order for publication issued, if the abstract showing full title in the applicant is brought down to a day reasonably near the date of the presentation of the application. A supplemental abstract of title brought down so as to include the date of the filing of the application must be furnished prior to the expiration of the 60-day period of publication.

[Circ. 430, Apr. 11, 1922, as amended by Circ. 491, Feb. 24, 1928]

§ 69.8 *Statement required that land is unreserved, unoccupied, unimproved, and unappropriated.*[6] Each person making application for patent under the mining laws, for lands in Alaska, must furnish a duly corroborated statement showing that no portion of the land applied for is occupied or reserved by the United States, so as to prevent its acquisition under said laws; that the land is not occupied or claimed by natives of Alaska; and that the land is unoccupied, unimproved and unappropriated by any person claiming the same other than the applicant.

§ 69.9 *Period allowed for filing of adverse claims.* The act of June 7, 1910 (36 Stat. 459; 48 U. S. C. 386), provides that adverse claims may be filed at any time during the 60-day period of publication or within 8 months thereafter. This provision operates to enlarge by 8 months additional the time within which an adverse claim may be filed.

[Circ. 430, Apr. 11, 1922, as amended by Circ. 491, Feb. 24, 1928]

§ 69.10 *Period allowed for institution of adverse suits.* (a) It is also provided by the act that adverse suits may be instituted at any time within 60 days after the filing of adverse claims in the district land office. This provision applies to any adverse claim which is seasonably filed.

(b) Managers of district land offices in Alaska will exercise the greatest care in applying the provisions of the act, and will allow no mineral entry until after the expiration of the full period granted for the filing of adverse claims. For example, on any application under which the publication period ended with or after June 7, 1910, no entry will in any event be allowed until after the expiration of the 8 months' period following the publication period.

[Circ. 430, Apr. 11, 1922, as amended by Circ. 491, Feb. 24, 1928]

AREAS SUBJECT TO SPECIAL LAWS

§ 69.11 *Mineral deposits in the Glacier Bay National Monument.* (a) Under the act of June 22, 1936 (49 Stat. 1817), the lands in the Glacier Bay National Monument, reserved by proclamation of February 26, 1925 (43 Stat. 1988), or as it may be extended are open to prospecting for the kinds of mineral now subject to location under the United States mining laws, and, upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations, duly made, will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries or claim thereto except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals, such occupation and use to be under general regulations prescribed by the Secretary of the Interior.

(b) The owner of a mining locatio may cut such timber within the boundaries of his claim as is necessary for mining purposes. Prospectors may cut timber for their necessary mining and domestic uses only with the permission of the custodian of the monument or his representative who will designate the timber to be cut. All slash, brush or debris resulting from the cutting of timber upon mining claims or by prospectors shall be disposed of by the claimant or prospector in such manner and at such time as may be designated by the National Park Service officer in charge so as to prevent the creation of fire hazards, or conditions conducive to the development of infestation by timber-destroying insects.

(c) Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition so long as it is used by the permittee or his successors.

(d) Occupation and use of the surf of an unpatented mining claim is restricted by the general law to such as reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this act will be entitled to such right. Upon written permission of the Director of the National Park Service or his representative, the surface of such claim may be used for other specified purposes, the use to be on such conditions and for such period as may be prescribed when permission is granted.

(e) Prospectors and miners shall at all times conform to any rules prescribed or which may be made applicable by the Director of the National Park Service to the national monument.

(f) The Park regulations for the protection of wild life provide:

The national monument is a sanctuary for wild life of every sort, and all hunting, or the killing, wounding, frightening, capturing or attempting to capture at any time of any wild bird or animal, except dangerous animals when it is necessary to prevent them from destroying human lives or inflicting personal injury, is prohibited.

Firearms, traps, seines, and nets are prohibited within the boundaries of the monument, except upon written permission of the custodian or his representative.

[6] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

[7] Mining locations may be made on lands in the Mount McKinley National Park, under the provisions of the act of February 26, 1917 (39 Stat. 918; 16 U. S. C. 347–354) which expressly provides that the United States mining laws shall be applicable to mineral lands in that area.

Lands segregated for classification or sold under the Alaska Public Sale Act of August 30, 1949 (63 Stat. 679, 48 U. S. C. 364a–364e) are subject to mining location, under the provision of section 3 of that act for the development of the reserved minerals under applicable law, including the United States mining laws, and subject to the rules and regulations of the Secretary of the Interior necessary to provide protection and compensation for damages from mining activities to the surface and improvements thereon. Such mining locations are subject to the applicable general regulations in Parts 69 and 185 and to the additional conditions and requirements in § 75.39 of this chapter.

(R. S. 2478; 43 U. S. C. 1201) Circular 1753

(g) The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to the act of June 22, 1936, will terminate when the minerals are mined out or the claim is abandoned. Any owner of an unpatented location who fails to perform annual assessment work on his claim for any assessment period will be assumed to have abandoned his claim and his right of occupation and use of the surface of the claim considered at an end.

(h) Applications for patents and final certificates issued thereon for mining claims in this monument should be noted "Glacier Bay National Monument Lands", and all patents issued for claims under the act will convey title to the minerals only, and contain appropriate reference to the act and the regulations issued thereunder.

(R. S. 2478; 43 U. S. C. 1201) (Circ. 1415, Dec. 28, 1936)

CROSS REFERENCE: For general mining regulations, see Part 185 of this chapter.

MINING FOR GOLD AND OTHER PRECIOUS METALS IN THE BEDS AND ALONG THE SHORES OF NAVIGABLE WATERS IN ALASKA

AUTHORITY: §§ 69.12 to 69.18 issued under 61 Stat. 916.

SOURCE: §§ 69.12 to 69.18 contained in Circular 1467, 12 F. R. 8205.

§ 69.12 *Purpose and authority.* The act of August 8, 1947 (61 Stat. 916) amends section 26 of the act of June 6, 1900, as amended (31 Stat. 321, 52 Stat. 588; 48 U. S. C. 331) to authorize the exploration and mining for gold and other precious metals in Alaska in land below the line of ordinary high tide on tidal waters and below the line of ordinary high water mark on nontidal waters navigable in fact, subject to certain conditions. It is the purpose of §§ 69.12 to 69.18, inclusive, to set forth the conditions under which such exploration and mining operations may be conducted.

§ 69.13 *Filing of notice of intention to mine.* Any citizen of the United States, any person who has legally declared his intention to become such, any association of such citizens, or any corporation organize under the laws of the United States or of any State or Territory thereof, shall, before commencing actual operations, file a notice of intention to mine or dredge for gold and other precious metals in any of the land described in the preceding section. This notice must be filed in triplicate in the nearest District Land Office, and should contain (a) the full name, address and citizenship of the person filing the notice, (b) a description of the place where the dredge will be initially located or the mining operations otherwise commenced, such place to be connected where practicable by course and distance to a corner of the public land survey on the shore, or if there are no surveyed lands in the vicinity, with the nearest, readily-ascertainable geographical or topographical point, (c) a statement that actual dredging or mining operations will be commenced no later than 90 days after the date of filing of the notice, and (d) a statement that the dredging or other mining operations will comply with all pertinent regulations and laws.

§ 69.14 *Area to be dredged.* In order to assure the preservation of order and the avoidance of conflict, each dredge commencing operations in accordance with §§ 69.12 to 69.18, inclusive, shall not be interfered with by other dredging or mining operations within an area of 200 feet in the direction of either bank and within a space of 500 feet up or down stream. This area shall be indicated by properly placed buoys. Other dredges or boats are to have access to such area for passage and navigational purposes, but, while passing through that area, are not to extract any minerals nor engage in any dredging or moving of materials except as may be necessary for the actual movement of the equipment.

§ 69.15 *Restrictions on dredge location.* No dredge shall be placed in a position or be so operated as to interfere with the free passage of boats on nontidal waters navigable in fact or along the shore line of tidal waters, or interfere with the landing at any public wharf, or with other authorized means for landing stores or supplies. No dredge shall be located nearer to the shore than 100 feet from the line of ordinary low tide on tidal waters. Nor shall any dredge be located within the limits of frontage occupied by any townsite, mission or trading company with established entry under the law.

§ 69.16 *Laws for the protection of navigable waters and fisheries.* No dredging or other mining operations shall be conducted unless all the applicable laws and regulations relating to navigable waters and to the protection of fisheries are complied with.

CROSS REFERENCE: The regulations of the Fish and Wildlife Service of the Department of the Interior concerning fisheries are codified in 50 CFR chapter I. For regulations of the Department of the Army concerning navigable waters, see 33 CFR Chapter II.

§ 69.17 *Prior rights protected.* No dredging or other mining shall in any way be deemed to affect or impair any valid claims, rights or privileges arising under any other provision of law, including possessory claims under the first proviso of section 8 of the act of May 17, 1884 (23 Stat. 26).

§ 69.18 *No title to be acquired; rights of future States.* No dredging or other mining operations shall authorize, or be permitted to lead to, the acquisition of title to any of the land dredged or mined. Any privileges acquired with respect to mining operations in land, title to which is later transferred to a future State upon its admission to the Union, and which is situated within its boundaries, shall be terminable, by such State, and the mining operations shall be subject to the laws of such State.

SCHOOL SECTIONS

§ 69.19 *Statutory authority; mining claims.* (a) The act of August 7 1939 (53 Stat. 1243; 48 U. S. C. 353) amended section 1 of the act of March 4, 1915 (38 Stat. 1214; 48 U. S. C. 353), to provide that the lands reserved to the Territory of Alaska for educational uses and the minerals therein shall be subject to disposition under the mining and mineral leasing laws of the United States, upon conditions providing for compensation to any Territorial lessee for any resulting damages to crops or improvements on such lands, and that the entire proceeds or income derived by the United States from such disposition of the lands or the minerals therein shall be appropriated and set apart as permanent funds in the Territorial treasury.

(b) The act of August 7, 1939, applies to the lands in sections 16 and 36 in each township in the Territory, and section 33 in each township in the Tanana Valley between parallels 64° and 65° of north latitude and between meridians 145° and 152° of west longitude, which have been surveyed and were not of known mineral character at the time of the acceptance of the survey, and any such numbered sections in other townships hereafter surveyed and not of known mineral character at the time of the acceptance of the survey. The act does not apply to such numbered sections to which the reservation for the Territory has not attached either because the lands have not been surveyed or because of their known mineral character at the date of the ac-

ceptance of the survey, which lands are subject to the operation of the mining and mineral leasing laws, in like manner as other public lands.

(Sec. 1, 38 Stat. 1214, as amended; 48 U. S. C. 353) [Circ. 1478, 5 F. R. 3394]

§ 69.20 *Mining locations, entries and patents.* Under the provisions of the amendatory act of August 7, 1939, lands in the reserved school sections are subject to location, entry and patent under the mining laws, subject to all the conditions thereof applicable to the Territory and with the additional condition that in cases where the lands are under lease from the Territory at the time of prospecting for mineral or making a mining location, the prospector or locator will be liable to and shall compensate such lessee for resulting damages to the crops and improvements of such lessee by reason of prospecting or mining operations. The act also provides that any lease issued by the Territory for such reserved lands after a valid appropriation under the mining laws shall be with due regard to the rights of the mineral claimant. Controversies between Territorial lessees and mineral prospectors or owners of mining claims on the same lands involving the right of possession, occupancy and use of the lands, or liability for damages, are matters within the jurisdiction of the local courts.

(Sec. 1, 38 Stat. 1314, as amended; 48 U. S. C. 353) [Circ. 1478, 5 F. R. 3394]

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Reprint, February 1, 1951, of Circular No. 430, April 11, 1922, as amended and extended by Circular No. 491, February 24, 1928; Circular No. 1415, December 28, 1936; Circular No. 1478, August 19, 1940; Circular No. 1612, February 5, 1946; Circular No. 1667, November 26, 1947, and Circular No. 1753, May 6, 1950.

Interior—Duplicating Section, Washington, D. C. 90726

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UNITED STATES
DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Circular No. 1785

Lode and Placer Mining Regulations

Replaces Nos. 430, 943, 1189, ~~[illegible]~~, 1278, 1298, 1337, 1347, 1456, 1502, 1529, 1612, 1658, 1681, 1747 and 1767

Part 185, Title 43
of the Code of Federal Regulations

As Amended to and Including
FEBRUARY 1, 1951

Replaced by 1941

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Circular No. 1785

PART 185—GENERAL MINING REGULATIONS

Reprint, February 1,1951.

AUTHORITY: §§ 185.98 to 185.103, issued under secs. 1–5, Pub. Law 115, 81st Cong.

[Circular 1747 February 14, 1950.]

CROSS REFERENCES: For Bureau of Mines, Department of the Interior, see 30 CFR Chapter 1. For leases and sale of minerals, restricted Indian lands, see 25 CFR Chapter 1, Subchapter R. For regulations of the Forest Service, Department of Agriculture relating to mineral lands and mining claims, see 36 CFR Part 251.

SUBPART A—LOCATIONS

AUTHORITY: §§ 185.1 to 185.4 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 185.1 to 185.4 contained in Circular 1278, Mar. 12, 1935, except as noted following section affected.

GENERAL STATEMENT

§ 185.1 *Lands subject to location and purchase.* Vacant public surveyed or unsurveyed lands are open to prospecting, and upon discovery of mineral, to location and purchase, as are also lands in national forests in the public-land States, lands entered or patented under the stock-raising homestead law (title to minerals only can be acquired), lands entered under other agricultural laws but not perfected, where prospecting can be done peaceably, and lands within the railroad grants for which patents have not issued.[1]

[Circ. 1278, Mar. 12, 1935, as amended by Circ. 1681, 13 F. R. 4571]

§ 185.2 *Definition of mineral under mining laws.* Whatever is recognized as a mineral by the standard authorities, whether metallic or other substance, when found in public lands in quantity and quality sufficient to render the lands valuable on account thereof, is treated as coming within the purview of the mining laws. Deposits of coal, oil, gas, oil shale, sodium, phosphate, potash, and in Louisiana and New Mexico sulphur, belonging to the United States, can be acquired under the mineral leasing laws, and are not subject to location and purchase under the United States mining laws.

§ 185.3 *Manner of initiating rights under locations.* Rights to mineral lands, owned by the United States, are initiated by prospecting for minerals thereon, and, upon the discovery of mineral, by locating the lands upon which such discovery has been made. A location is made by staking the corners of the claim,[2] posting notice of location thereon and complying with the State laws, regarding the recording of the location in the county recorder's office, discovery work, etc.[3]

§ 185.4 *Who may make locations.* Citizens of the United States, or those who have declared their intention to become such, including minors who have reached the age of discretion and corporations organized under the laws of any State, may make mining locations. Agents may make locations for qualified locators.

SUBPART B—NATURE OF MINING CLAIMS

AUTHORITY: §§ 185.5 to 185.32 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 185.5 to 185.32 contained in Circular 430, Apr. 11, 1922. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

§ 185.5 *Classes of claims.* Mining claims are of two distinct classes: Lode claims and placers.[4]

LODE CLAIMS

§ 185.6 *Lodes located previous to May 10, 1872.* The status of lode claims located or patented previous to May 10, 1872, is not changed with regard to their extent along the lode or width of surface; but the claim is enlarged by sections 2322 and 2328, Revised Statutes (30 U. S. C. 26, 33),[5] by investing the locator, his heirs or assigns, with the right to follow, upon the conditions stated therein, all veins, lodes, or ledges, the top or apex of which lies inside of the surface lines of his claim.

§ 185.7 *Lodes must not have been adversely claimed.* It is to be distinctly understood that the law limits the possessory right to veins, lodes, or ledges, other than the one named in the original location, to such as were not adversely claimed on May 10, 1872, and that where such other vein or ledge was so adversely claimed at that date the right of the party so adversely claiming is in no way impaired by the act of that date.

§ 185.8 *Length of lode claims.* From and after May 10, 1872, any person who is a citizen of the United States, or who

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[1] Mining locations may be made in the States of Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, also in the Territory of Alaska.

Lands in national parks and national monuments are not subject to mining location, except where specifically authorized by law. (a) The mining laws were extended to the Death Valley National Monument, California, by the act of June 13, 1933 (48 Stat. 139; 16 U. S. C. 447), with a reservation of surface rights. They have also been extended to the Mount McKinley National Park and the Glacier Bay National Monument, both in Alaska. See 36 CFR 1.17 (c) and Part 69 of this chapter. (b) Mining locations in the Olympic National Park, Washington, made prior to June 29, 1943, are governed by §§ 185.33a to 185.33g. (c) Mining locations in the Organ Pipe Cactus National Monument may be made pursuant to §§ 185.33h to 185.33o.

Lands in Indian reservations are not subject to the United States mining laws, except in the Papago Indian Reservation. See § 185.37.

For mining claims in national forests, see § 185.33.

Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands, located in Oregon, are subject to mining location in accordance with provisions of §§ 185.37a to 185.37e.

[2] Except placer claims described by legal subdivision.

[3] As supplemental to the United States mining laws there are State statutes relative to location, manner of recording of mining claims, etc., in the State, which should also be observed in the location of mining claims. Information as to State laws can be obtained locally or from State officials.

[4] In addition, there are tunnel sites and mill sites. A mile-site location should be made in substantially the same manner as a lode or placer claim (54 I. D. 255).

[5] Sections 2322 and 2328 were incorporated into the Revised Statutes from sections 3 and 9, respectively, of the act of May 10, 1872 (17 Stat. 91, 94; 30 U. S. C. 26, 33).

has declared his intention to become a citizen, may locate, record, and hold a mining claim of 1,500 linear feet along the course of any mineral vein or lode subject to location; or an association of persons, severally qualified as above, may make joint location of such claim of 1,500 feet, but in no event can a location of a vein or lode made after May 10, 1872, exceed 1,500 feet along the course thereof, whatever may be the number of persons composing the association.

§ 185.9 *Extent of surface ground.* With regard to the extent of surface ground adjoining a vein or lode, and claimed for the convenient working thereof, the act of May 10, 1872, provides that the lateral extent of locations of veins or lodes made after said date shall in no case exceed 300 feet on each side of the middle of the vein at the surface, and that no such surface rights shall be limited by any mining regulations to less than 25 feet on each side of the middle of the vein at the surface, except where adverse rights existing on May 10, 1872, may render such limitation necessary; the end lines of such claims to be in all cases parallel to each other. Said lateral measurements can not extend beyond 300 feet on either side of the middle of the vein at the surface, or such distance as is allowed by local laws. For example: 400 feet can not be taken on one side and 200 feet on the other. If, however, 300 feet on each side are allowed, and by reason of prior claims but 100 feet can be taken on one side, the locator will not be restricted to less than 300 feet on the other side; and when the locator does not determine by exploration where the middle of the vein at the surface is, his discovery shaft must be assumed to mark such point.

§ 185.10 *Restriction on width of claims by local laws.* No lode located after May 10, 1872, can exceed a parallelogram 1,500 feet in length by 600 feet in width, but whether surface ground of that width can be taken depends upon the local regulations or State or Territorial laws in force in the several mining districts. No such local regulations or State or Territorial laws shall limit a vein or lode claim to less than 1,500 feet along the course thereof, whether the location is made by one or more persons, nor can surface rights be limited to less than 50 feet in width unless adverse claims existing on May 10, 1872, render such lateral limitation necessary.

§ 185.11 *Defining of locations by claimants.*[6] Locators can not exercise too much care in defining their locations at the outset, inasmuch as section 5 of the act of May 10, 1872 (17 Stat. 92; 30 U. S. C. 28) requires that all records of mining locations made subsequent to the date of said act shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located, by reference to some natural object or permanent monument, as will identify the claim.

§ 185.12 *Discovery required before location.* No lode claim shall be located until after the discovery of a vein or lode within the limits of the claim, the object of which provision is evidently to prevent the appropriation of presumed mineral ground for speculative purposes, to the exclusion of bona fide prospectors, before sufficient work has been done to determine whether a vein or lode really exists.

§ 185.13 *Discovery work.* The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth therein to discover and develop a mineral-bearing vein, lode, or crevice; should determine, if possible, the general course of such vein in either direction from the point of discovery, by which direction he will be governed in marking the boundaries of his claim on the surface.

§ 185.14 *Location notice; monumenting.* (a) The location notice should give the course and distance as nearly as practicable from the discovery shaft on the claim to some permanent, well-known points or objects, such, for instance, as stone monuments, blazed trees, the confluence of streams, point of intersection of well-known gulches, ravines, or roads, prominent buttes, hills, etc., which may be in the immediate vicinity, and which will serve to perpetuate and fix the locus of the claim and render it susceptible of identification from the description thereof given in the record of locations in the district, and should be duly recorded.

(b) In addition to the foregoing data, the claimant should state the names of adjoining claims, or, if none adjoin, the relative positions of the nearest claims; should drive a post or erect a monument[7] of stones at each corner of his surface ground, and at the point of discovery or discovery shaft should fix a post, stake, or board, upon which should be designated the name of the lode, the name or names of the locators, the number of feet claimed, and in which direction from the point of discovery, it being essential that the location notice filed for record, in addition to the foregoing description, should state whether the entire claim of 1,500 feet is taken on one side of the point of discovery, or whether it is partly upon one and partly upon the other side thereof, and in the latter case, how many feet are claimed upon each side of such discovery point.

§ 185.15 *Location notices to be recorded.* The location notice must be filed for record in all respects as required by the State or Territorial laws and local rules and regulations, if there be any.

§ 185.16 *Annual assessment work.* In order to hold the possessory title to a mining claim located prior to May 10, 1872, the law requires that $10 shall be expended annually in labor or improvements for each 100 feet in length along the vein or lode. In order to hold the possessory right to a location made since May 10, 1872, not less than $100 worth of labor must be performed or improvements made thereon annually. Under the provisions of the act of January 22, 1880, the first annual expenditure became due and must have been performed during the calendar year succeeding that in which the location was made. By the act of August 24, 1921 (42 Stat. 186; 30 U. S. C. 28), it was provided that the assessment period should thereafter commence at 12 o'clock meridian on the first day of July succeeding the date of the location of the claim. Where a number of contiguous claims are held in common, the aggregate expenditure that would be necessary to hold all the claims, may be made upon any one claim. Cornering locations are held not to be contiguous.

§ 185.17 *Failure to perform annual assessment work.* Failure to make the expenditure or perform the labor required upon a location made before or since May 10, 1872, will subject a claim to relocation unless the original locator, his heirs, assigns, or legal representatives have resumed work after such failure and before relocation.

[6] Section 5 of the act of May 10, 1872, now section 2324, Revised Statutes (30 U. S. C. 28), requires that "the location must be distinctly marked on the ground so that its boundaries can be readily traced."

[7] As to the importance of monuments, and as to their paramount authority, see the act of April 28, 1904 (33 Stat. 545; 30 U. S. C. 34), which amended section 2327 R. S.

§ 185.18 *Determination of right of possession between rival claimants.* The annual expenditure of $100 in labor or improvements on a mining claim, required by section 2324 of the Revised Statutes (30 U. S. C. 28), is, with the exception of certain phosphate placer locations, validated by the act of January 11, 1915 (38 Stat. 792; 30 U. S. C. 131), under which regulations were issued March 31, 1915 (Circ. 396), solely a matter between rival or adverse claimants to the same mineral land, and goes only to the right of possession, the determination of which is committed exclusively to the courts.

§ 185.19 *Annual assessment work not required after patent certificate.* Annual expenditure is not required subsequent to entry, the date of issuing the patent certificate being the date contemplated by statute.

§ 185.20 *Failure of a co-owner to contribute to annual assessment work.* Upon the failure of any one of several co-owners to contribute his proposition of the required expenditures, the co-owners, who have performed the labor or made the improvements as required, may, at the expiration of the year, give such delinquent co-owner personal notice in writing, or notice by publication in the newspaper published nearest the claim for at least once a week for 90 days; and if upon the expiration of 90 days after such notice in writing, or upon the expiration of 180 days after the first newspaper publication of notice, the delinquent co-owner shall have failed to contribute his proportion to meet such expenditures or improvements, his interest in the claim by law passes to his co-owners who have made the expenditures or improvements as aforesaid. Where a claimant alleges ownership of a forfeited interest under the foregoing provision, the statement of the publisher as to the facts of publication, giving dates, and a printed copy of the notice published, should be furnished, and the claimant must state that the delinquent co-owner failed to contribute his proper proportion within the period fixed by the statute.

TUNNEL SITES

§ 185.21 *Possessory right of tunnel proprietor.* The effect of section 2323, Revised Statutes (30 U. S. C. 27), is to give the proprietors of a mining tunnel run in good faith the possessory right to 1,500 feet of any blind lodes cut, discovered, or intersected by such tunnel, which were not previously known to exist within 3,000 feet from the face or point of commencement of such tunnel, and to prohibit other parties, after the commencement of the tunnel, from prospecting for and making locations of lodes on the line thereof and within said distance of 3,000 feet, unless such lodes appear upon the surface or were previously known to exist. The term "face," as used in said section, is construed and held to mean the first working face formed in the tunnel, and to signify the point at which the tunnel actually enters cover; it being from this point that the 3,000 feet are to be counted upon which prospecting is prohibited as aforesaid.[8]

§ 185.22 *Location of tunnel claims.* To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover as aforesaid, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel, the height and width thereof, and the course and distance from such face or point of commencement to some permanent well-known objects in the vicinity by which to fix and determine the locus in manner heretofore set forth applicable to locations of veins or lodes, and at the time of posting such notice they shall, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at proper intervals, to the terminus of the 3,000 feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence.

§ 185.23 *Recording of notices.* A full and correct copy of such notice of location defining the tunnel claim must be filed for record with the mining recorder of the district, to which notice must be attached the sworn statement or declaration of the owners, claimants, or projectors of such tunnel, setting forth the facts in the case; stating the amount expended by themselves and their predecessors in interest in prosecuting work thereon; the extent of the work performed, and that it is bona fide their intention to prosecute work on the tunnel so located and described with reasonable diligence for the development of a vein or lode, or for the discovery of mines, or both, as the case may be. This notice of location must be duly recorded, and, with the said sworn statement attached, kept on the recorder's files for future reference.

PLACER CLAIMS

§ 185.24 *Maximum allowable acreage.* (a) By section 2330 of the Revised Statutes (30 U. S. C. 36), it is declared that no location of a placer claim made after July 9, 1870, shall exceed 160 acres for any one person or association of persons, which location shall conform to the United States surveys.

(b) Section 2331 of the Revised Statutes (30 U. S. C. 35) provides that all placer-mining claims located after May 10, 1872, shall conform as nearly as practicable with the United States system of public land surveys and the rectangular subdivisions of such surveys, and such locations shall not include more than 20 acres for each individual claimant.

(c) The foregoing provisions of law are construed to mean that after July 9, 1870, no location of a placer claim can be made to exceed 160 acres, whatever may be the number of locators associated together, or whatever the local regulations of the district may allow; and that from and after May 10, 1872, no location can exceed 20 acres for each individual participating therein; that is, a location by two persons can not exceed 40 acres, and one by three persons can not exceed 60 acres.

§ 185.25 *Discovery.* But one discovery of mineral is required to support a placer location, whether it be of 20 acres by an individual, or of 160 acres or less by an association of persons.

§ 185.26 *Locations authorized in 10-acre units.* By section 2330 of the Revised Statutes (30 U. S .C. 36), authority is given for subdividing 40-acre legal subdivisions into 10-acre tracts. These 10-acre tracts should be considered and

[8] Section 2323 of the Revised Statutes provides: "Failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel."

dealt with as legal subdivisions, and an applicant having a placer claim which conforms to one or more of such 10-acre tracts, contiguous in case of two or more tracts, may make entry thereof, after the usual proceedings, without further survey or plat.

§ 185.27 *Manner of describing 10-acre units.* A 10-acre subdivision may be described, for instance if situated in the extreme northeast of the section, as the "NE. ¼ of the NE. ¼ of the NE. ¼" of the section, or, in like manner, by appropriate terms, wherever situated; but in addition to this description, the notice must give all the other data required in a mineral application, by which parties may be put on inquiry as to the land sought to be patented. The proofs submitted with applications must show clearly the character and extent of the improvements upon the premises.

§ 185.28 *Conformity of placer claims to the public land surveys.* (a) All placer-mining claims located after May 10, 1872, shall conform as near as practicable with the United States system of public-land surveys and the rectangular subdivisions of such surveys, whether the locations are upon surveyed or unsurveyed lands.

(b) Conformity to the public-land surveys and the rectangular subdivisions thereof will not be required where compliance with such requirement would necessitate the placing of the lines thereof upon other prior located claims or where the claim is surrounded by prior locations.

(c) Where a placer location by one or two persons can be entirely included within a square 40-acre tract, by three or four persons within two square 40-acre tracts placed end to end, by five or six persons within three square 40-acre tracts, and by seven or eight persons within four square 40-acre tracts, such locations will be regarded as within the requirements where strict conformity is impracticable.

(d) Whether a placer location conforms reasonably with the legal subdivisions of the public surveys is a question of fact to be determined in each case, and no location will be passed to patent without satisfactory evidence in this regard. Claimants should bear in mind that it is the policy of the Government to have all entries whether of agricultural or mineral lands as compact and regular in form as reasonably practicable, and that it will not permit or sanction entries or locations which cut the public domain into long narrow strips or grossly irregular or fantastically snaped tracts. (Snow Flake Fraction Placer, 37 L. D. 250.)

§ 185.29 *Annual expenditures.* The annual expenditure to the amount of $100, required by section 2324, Revised Statutes (30 U. S. C. 28), must be made upon placer as well as lode locations.

§ 185.30 *Building-stone placers.* The act of August 4, 1892 (27 Stat. 348; 30 U. S. C. 161), extends the mineral land laws so as to bring lands chiefly valuable for building stone within the provisions of said laws.

CROSS REFERENCE: For entry on stone lands, see Part 285 of this chapter.

§ 185.31 *Saline placers.* (a) Under the act approved January 31, 1901 (31 Stat. 745; 30 U. S. C. 162),[9] extending the mining laws to saline lands, the provisions of the law relating to placer-mining claims are extended to all States and the Territory of Alaska, so as to permit the location and purchase thereunder of all unoccupied public lands containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, with the proviso, "That the same person shall not locate or enter more than one claim hereunder."

(b) Rights obtained by location under the placer-mining laws are assignable, and the assignee may make the entry in his own name; so, under this act a person holding as assignee may make entry in his own name: *Provided,* That he has not held under this act, at any time, either as locator or entryman, any other lands; his right is exhausted by having held under this act any particular tract, either as locator or entryman, either as an individual or as a member of an association. It follows, therefore, that no application for patent or entry, made under this act, shall embrace more than one single location.

(c) In order that the conditions imposed by the proviso, as set forth in paragraph (b) of this section, may duly appear, the application for patent must contain or be accompanied by a specific statement by each person whose name appears therein that he never has, either as an individual or as a member of an association, located or entered any other lands under the provisions of this act. The application for patent should also be accompanied by a showing, fully disclosing the qualifications as defined by the proviso, of the applicants' predecessors in interest.

§ 185.32 *Petroleum placers.* The act of February 11, 1897 (29 Stat. 526), provides for the location and entry of public lands chiefly valuable for petroleum or other mineral oils, and entries of that nature made prior to the passage of said act are to be considered as though made thereunder.[10]

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[9] This act was superseded by the Mineral-Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181 et seq.), whereby saline (sodium) deposits were made subject to disposal by leases instead of mining locations. As to locations initiated prior to February 25, 1920, see § 195.34 of this chapter.

[10] This act was superseded by the Mineral Leasing Act of February 25, 1920 (41 Stat. 437). As to locations initiated prior to February 25, 1920, see § 192.74.

SUBPART C—AREAS SUBJECT TO SPECIAL LAWS [11]

NATIONAL FORESTS

§ 185.33 *Mining claims in national forests.* The act of June 4, 1897 (30 Stat. 36), provides that "any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry," notwithstanding the reservation. This makes mineral lands in the forest reserves subject to location and entry under the general mining laws in the usual manner.[12]

(R. S. 2478; 43 U. S. C. 1201) [Circ. 430, Apr. 11, 1922]

MINING CLAIMS IN THE OLYMPIC NATIONAL PARK, WASHINGTON

AUTHORITY: §§ 185.33a to 185.33g issued under sec. 2, 52 Stat. 1242; 16 U. S. C. 252.

SOURCE: §§ 185.33a to 185.33g contained in Circular 1456, 4 F. R. 1212.

§ 185.33a *Statutory authority.* (a) By the act of Congress approved June 29, 1938 (52 Stat. 1241; 16 U. S. C. 251–255), the Mount Olympus National Monument was abolished and certain described lands, including the lands in the Monument, were reserved, withdrawn from disposal, and dedicated and set apart as a public park to be known as the Olympic National Park. The act provides that valid existing claims shall not be affected thereby.

(b) Section 2 of the act provides:

That in the areas of said park lying east of the range line between ranges 9 and 10 and north of the seventh standard parallel, and east of the range line between ranges 4 and 5 west, Willamette meridian, all mineral deposits of the classes and kinds now subject to location, entry, and patent under the mining laws of the United States shall be, exclusive of the land containing them, subject to disposal under such laws for a period of five years from the date of approval of this Act, with rights of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.

§ 185.33b *Mining locations during 5-year period.* Under the provisions of section 2 of the act the lands within the area described in that section are, for a period of 5 years from the date of the act, open to prospecting for the kinds of mineral subject to location under the United States mining laws and upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made within the 5-year period will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto, except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals, such occupation and use to be under general regulations prescribed by the Secretary of the Interior. No prospecting may be done or locations made on the land after the expiration of the 5-year period from the date of this act, but the right to remove mineral deposits from valid locations made during the 5-year period may be maintained thereafter by complying with the requirements of the United States mining laws and §§ 185.33a–185.33g.

§ 185.33c *Cutting of timber.* The locator of a mining claim within the area described in section 2 of the act may cut timber within the boundaries of his claim for mining and domestic uses only with the permission of the superintendent of the park or his representative who will designate the timber to be cut. All slash, brush or debris resulting from the cutting of timber upon mining claims shall be disposed of by the locator in such manner and at such time as may be designated by the National Park Service officer in charge so as to prevent the creation of fire hazards, or conditions conducive to the development of infestation by timber-destroying insects.

§ 185.33d *Construction of trails and roads.* Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the park upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the superintendent of the park, so long as it is used by the permittee or his successors.

§ 185.33e *Occupation and use of surface.* Occupation and use of the surface of a mining claim is restricted by section 2 of the act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this section of the act will be entitled to such right. A locator or patentee shall not be entitled to the exclusive use of any hot or mineral springs which may be within the boundaries of his claim, or to any use of such springs for other than mining purposes. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this park. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the park.

CROSS REFERENCE: For regulations of the Secretary of the Interior affecting this park, see 36 CFR Part 26.

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[11] Mining locations may be made in the States of Arizona, Arkansas, California, Colorado, Florida, Idaho, Louisiana, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, also in the Territory of Alaska.

Lands in national parks and national monuments are not subject to mining location, except where specifically authorized by law. See note to § 185.1.

Lands in Indian reservations are not subject to the United States mining laws, except in the Papago Indian Reservation. See § 185.37.

[12] Locators must comply with forest regulations. See 36 CFR 200.26 and 251.12.

For mining rights in the following national forests, see statutes indicated: In the Prescott National Forest, Arizona, 47 Stat. 771, 16 U. S. C. 482a (sec. 185.34 of this chapter); in the Mount Hood National Forest, Oregon, 48 Stat. 773, 16 U. S. C. 482b–482d; in the Lincoln National Forest, New Mexico, 53 Stat. 817, 16 U. S. C. 482e–482g; in the Coronado National Forest, Arizona, 54 Stat. 52, 16 U. S. C. 482h; in the Plumas National Forest, California, 16 U. S. C. 482i; and in the Harney 16 U. S. C. 678a–678b.

Mining claims cannot be located on lands in national forests acquired under the act of March 1, 1911 (36 Stat. 962ff; 16 U. S. C. 513–519) known as the Weeks Act. See §§ 200.31 to 200.36 of this chapter.

§ 185.33f *Termination of right to use of surface of mining claims.* The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to section 2 of the act will terminate when the minerals are mined out or the claim is abandoned. Any locator of an unpatented claim who fails to perform annual assessment work on his claim for any assessment period will be assumed to have abandoned his claim, and his right of occupation and use of the surface of the claim considered at an end.

§ 185.33g *Title to minerals only.* Applications for patents and final certificates issued thereon for mining claims located under section 2 of the act should be noted "Olympic National Park Lands", and all patents issued for such claims will convey title to the minerals to the act and §§ 185.33a–185.33g.

MINING WITHIN THE ORGAN PIPE CACTUS NATIONAL MONUMENT IN ARIZONA

AUTHORITY: §§ 185.33h to 185.33o issued under 55 Stat. 745; 16 U. S. C. 450z.

SOURCE: §§ 185.33h to 185.33o contained in Circular 1502, 7 F. R. 562.

§ 185.33h *Statutory authority.* By the act of Congress approved October 27, 1941 (55 Stat. 745; 16 U. S. C. 450z), all mineral deposits of the classes and kinds then subject to location, entry and patent under the United States mining laws within the Organ Pipe Cactus National Monument in Arizona, were made, exclusive of the land containing them, subject to disposal under such laws, with right of occupation and use of so much of the surface of the land as may be required for all purposes reasonably incident to the mining or removal of the minerals and under such general regulations as may be prescribed by the Secretary of the Interior.

§ 185.33i *Mining locations.* The lands within the Organ Pipe Cactus National Monument as established by Proclamation No. 2232 dated April 13, 1937 (50 Stat. 1827), are open to prospecting for the kinds of mineral subject to location under the United States mining laws and upon discovery of any such mineral, locations may be made in accordance with the provisions of the mining laws and regulations thereunder. Such locations duly made will carry all the rights and incidents of mining locations, except that they will give to the locator no title to the land within their boundaries, or claim thereto, except the right to occupy and use so much of the surface of the land as required for all purposes reasonably necessary to mine and remove the minerals.

§ 185.33j *Occupation and use of surface.* Occupation and use of the surface of a mining claim is restricted by the act to such as is reasonably incident to the exploration, development and extraction of the minerals in the claim. Accordingly, any locator or patentee of a mining claim located under this act will be entitled to such right. Prospectors and miners shall at all times conform to any rules now prescribed or which may be made applicable by the Secretary of the Interior to this monument. Special attention is directed to those regulations prohibiting hunting, trapping, and the carrying of firearms within the boundaries of the monument.

§ 185.33k *Termination of right to use of surface of mining claims.* The right of occupation and use of the surface of the land embraced in the boundaries of a location, entry or patent pursuant to this act will terminate when the minerals are mined out or the claim is abandoned.

§ 185.33l *Title to minerals only.* Applications for patents and final certificates issued thereon for mining claims located under the act should be noted "Organ Pipe Cactus National Monument Lands," and all patents issued for such claims will convey title to the minerals only, and contain appropriate reference to the act and these regulations.

§ 185.33m *Destroying vegetation prohibited.* The locator of a mining claim within the monument area shall refrain from destroying or disturbing vegetation within the boundaries of his claim except as is necessary for the proper development thereof for mining purposes.

§ 185.33n *Construction of trails and roads.* Prospectors or miners shall not open or construct roads or vehicle trails without first obtaining a permit from the Director of the National Park Service. Applications for such permits may be made through the officer in charge of the monument upon submitting a map or sketch showing the location of the mining property to be served and the location of the proposed road or vehicle trail. The permit may be conditioned upon the permittee maintaining the road or trail in a passable condition, satisfactory to the officer in charge, so long as it is used by the permittee or his successors.

§ 185.33o *Lands containing certain features not subject to location.* Lands containing springs, wells, water holes, other sources of water supply, monument headquarters, and recreation areas are not subject to location.

CITY OF PRESCOTT WATERSHED, ARIZONA

§ 185.34 *Minerals in city of Prescott watershed in Arizona.* (a) The act of January 19, 1933 (47 Stat. 771; 16 U. S. C. 482a) applies to approximately 3,600 acres in the city of Prescott municipal watershed, within the Prescott National Forest, Arizona. Rights acquired under mining locations made after the date of the act on any of the described lands are limited to the right to occupy and use so much of the surface of the land covered by the location as is reasonably necessary to carry on prospecting and mining, including the taking of mineral deposits and timber required by or in the mining operations; and patents for such locations shall convey title to the mineral deposits and a limited right to cut and remove timber for mining purposes, such patent to reserve to the United States all title in or to the surface of the lands and products thereof.

(b) The manager will note on the face of all applications for patent for mining claims embracing any of the described lands that the same are subject to the conditions, provisions, limitations, and reservations of the act, except applications for claims located prior to the date of the act and as to which the applicants expressly request patent under the provisions of the general mining laws. Patents issued subject to the act will contain appropriate conditions with respect to cutting of timber and reservation of surface in the United States.

(c) Under section 3 of the act (47 Stat. 771; 16 U. S. C. 482a), valid claims existing at the date of the act and thereafter maintained may be perfected under this act or under the law under which they were initiated, as the claimant may desire. Such claimant may, therefore, continue the development of his claim under the provisions of the act and secure patent for the mineral deposits only under its provisions, or he may continue to hold under the general mining laws

and secure patent which will convey to him the surface as well as the minerals in the claim.

(R. S. 2478; 43 U. S. C. 1201) [Circ. 1298, May 4, 1933; see also item 3 of Note to chapter]

CROSS REFERENCE: For patents, generally, see Part 108 of this chapter.

WITHDRAWN LANDS

§ 185.35 *Mineral locations in stock driveway withdrawals.* (a) Under authority of the provisions of the act of January 29, 1929 (45 Stat. 1144; 43 U. S. C. 300), the rules, regulations, and restrictions in this section are prescribed for prospecting for minerals of the kinds subject to the United States mining laws, and the locating of mining claims upon discovery of such minerals, in lands within stock driveway withdrawals made before or after May 4, 1929.

(b) All prospecting and mining operations shall be conducted in such manner as to cause no interference with the use of the surface of the land for stock driveway purposes, except such as may actually be necessary.

(c) While a mining location will be made in accordance with the usual procedure for locating mining claims, and will describe a tract of land, having due regard to the limitations of area fixed by the mining laws, the locator will be limited under his location to the right to the minerals discovered in the land and to mine and remove the same, and to occupy so much of the surface of the claim as may be required for all purposes reasonably incident to the mining and removal of the minerals.

(d) All excavations and other mining work and improvements made in prospecting and mining operations shall be fenced or otherwise protected to prevent the same from being a menace to stock on the land.

(e) No watering places shall be inclosed, nor proper and lawful access of stock thereto prevented, nor the watering of stock thereat interfered with.

(f) Prospecting for minerals and the location of mining claims on lands included in such withdrawals shall be subject to the provisions and conditions of the mining laws and the regulations thereunder.

(g) Mining claims on lands within stock driveway withdrawals, located prior to May 4, 1929, and subsequent to the date of the withdrawal, may be held and perfected subject to the provisions and conditions of the act and the regulations in this section.

(h) Every application for patent for any minerals located subject to this act must bear on its face, before being executed by the applicant and presented for filing, the following notation:

Subject to the provisions of section 10 of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144).

Like notation will be made by the manager on the final certificates issued on such a mineral application.

(i) Patents issued on such applications will contain the added condition:

That this patent is issued subject to the provisions of the act of December 29, 1916 (39 Stat. 862), as amended by the act of January 29, 1929 (45 Stat. 1144), with reference to the disposition, ocupancy and use of the land as permitted to an entryman under said act.

(R. S. 2478; 43 U. S. C. 1201) [Circ. 1189, May 4, 1929]

§ 185.36 *Mineral locations in reclamation withdrawals.*[13] (a) The act of April 25, 1932 (47 Stat. 136; 43 U. S. C. 154), authorizes the Secretary of the Interior in his discretion to open to location, entry and patent under the general mining laws with reservation of rights, ways and easements, public lands of the United States which are known or believed to contain valuable deposits of minerals and which are withdrawn from development and acquisition because they are included within the limits of withdrawals made pursuant to section 3 of the reclamation act of June 17, 1902 (32 Stat. 388; 43 U. S. C. 416).

(b) Application to open lands to location under the act may be filed by a person, association or corporation qualified to locate and purchase claims under the general mining laws. The application must be executed in duplicate and filed in the land office of the district in which the lands are situated, must describe the land the applicant desires to locate, by legal subdivision if surveyed, or by metes and bounds if unsurveyed, and must set out the facts upon which is based the knowledge or belief that the lands contain valuable mineral deposits, giving such detail as the applicant may be able to furnish as to the nature of the formation, kind and character of the mineral deposits.

(c) When the application is received in the Bureau of Land Management, if found satisfactory, the duplicate will be transmitted to the Bureau of Reclamation with request for report and recommendation. In case the Commissioner, Bureau of Reclamation, makes an adverse report on the application, it will be rejected subject to right of appeal.

(d) If in the opinion of the Commissioner, Bureau of Reclamation, the lands may be opened under the act without prejudice to the rights of the United States, he will in his report recommend the reservation of such ways, rights and easements as he considers necessary or appropriate, and/or the form of contract to be executed by the intending locator or entryman as a condition precedent to the vesting of any rights in him, which in his opinion may be necessary for the protection of the irrigation interests.

(e) Upon receipt of a favorable report from the Commissioner, Bureau of Reclamation, containing the necessary data, the Director of the Bureau of Land Management will submit the application to the Secretary of the Interior with appropriate recommendation that the land be opened to location, entry, and patent under the mining laws, subject to such reservations, and/or contract to be entered into by the intending locator.

(R. S. 2478; 43 U. S. C. 1201) [Circ. 1275, June 22, 1932; see also item 3 of Note to chapter]

CROSS REFERENCE: For Bureau of Reclamation regulation concerning waiver of mineral rights, see § 401.27 of this title.

PAPAGO INDIAN RESERVATION

§ 185.37 *Mineral locations in Papago Indian Reservation, in Arizona.* (a) The act of June 18, 1934 (48 Stat. 984; 25 U. S. C. 461–479), as amended by the act of August 28, 1937 (50 Stat. 862; 25 U. S. C., 463), revokes departmental order of October 28, 1932, which temporarily withdrew from all forms of mineral entry or claim the lands within the Papago Indian Reservation and restores, as of June 18, 1934, such lands to exploration, location and purchase under the existing mining laws of the United States.

[13] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(b) The procedure in the location of mining claims, performance of annual labor and the prosecution of patent proceedings therefor shall be the same as provided by the United States mining laws and regulations thereunder, with the additional requirements hereinafter prescribed.

(c) In addition to complying with the existing laws and regulations governing the recording of mining locations with the proper local recording officer, the locator of a mining claim within the Papago Indian Reservation shall furnish to the superintendent or other officer in charge of the reservation, within 90 days of such location, a copy of the location notice, together with a sum amounting to 5 cents for each acre and 5 cents for each fractional part of an acre embraced in the location for deposit with the Treasury of the United States to the credit of the Papago Tribe as yearly rental. Failure to make the required annual rental payment in advance each year until an application for patent has been filed for the claim shall be deemed sufficient grounds for invalidating the claim. The payment of annual rental must be made to the superintendent or other officer in charge of the reservation each year on or prior to the anniversary date of the mining location.

(d) Where a mining claim is located within the reservation, the locator shall pay to the superintendent or other officer in charge of the reservation damages for the loss of any improvements on the land in such a sum as may be determined by the Secretary of the Interior to be a fair and reasonable value of such improvements, for the credit of the owner thereof. The value of such improvements may be fixed by the Commissioner, Bureau of Indian Affairs, with the approval of the Secretary of the Interior, and payment in accordance with such determination shall be made within 1 year from date thereof.

(e) At the time of filing with the manager an application for mineral patent for lands within the Papago Indian Reservation the applicant shall furnish, in addition to the showing required under the general mining laws, a statement from the superintendent or other officer in charge of the reservation, that he has deposited with the proper official in charge of the reservation for deposit in the Treasury of the United States to the credit of the Papago Tribe a sum equal to $1 for each acre and $1 for each fractional part of an acre embraced in the application for patent in lieu of annual rental, together with a statement from the superintendent or other officer in charge of the reservation that the annual rentals have been paid each year and that damages for loss of improvements, if any, have been paid.

(f) Upon the filing in the office of the manager of an application for patent for land within the reservation, together with the evidence required in the preceding paragraph, the manager will, if no reason appears for rejecting the application, proceed to publish a notice as provided for by the mining regulations. The manager will forward copies of the notice of application for patent to the superintendent of the reservation and to the regional administrator, endorsing thereon "within Papago Indian Reservation," requesting both to report in accordance with the instructions of December 5, 1916 (45 L. D. 539).

(g) The act provides that in case patent is not acquired the sum deposited in lieu of annual rentals shall be refunded. Where patent is not acquired, such sums due as annual rentals but not paid during the period of patent application shall be deducted from the sum deposited in lieu of annual rental. Applications for refund shall be filed in the office of the manager and should follow the general procedure in applications for repayment.

(h) Water reservoirs, charcos, water holes, springs, wells, or any other form of water development by the United States or the Papago Indians shall not be used for mining purposes under the terms of the said act of August 28, 1937, except under permit from the Secretary of the Interior approved by the Papago Indian Council.

(i) A mining location may not be located on any portion of a 10 acre legal subdivision containing water reservoirs, charcos, water holes, springs, wells or any other form of water development by the United States or the Papago Indians except under a permit from the Secretary of the Interior approved by the Papago Indian Council which permit shall contain such stipulations, restrictions, and limitations regarding the use of the land for mining purposes as may be deemed necessary and proper to permit the free use of the water thereon by the United States or the Papago Indians.

(j) The term "locator" wherever used in this section shall include and mean his successors, assigns, grantees, heirs, and all others claiming under or through him.

(R. S. 2478, 43 U. S. C. 1201) [Circ. 1347, Nov. 13, 1937]

MINERAL LOCATIONS IN REVESTED OREGON AND CALIFORNIA RAILROAD AND RECONVEYED COOS BAY WAGON ROAD GRANT LANDS

AUTHORITY: §§ 185.37a to 185.37e issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 185.37a to 185.37e contained in Circular 1681, 13 F. R. 4571.

§ 185.37a *General provisions.* (a) The act of April 8, 1948 (62 Stat. 162) reopens the revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands (hereinafter referred to in this section as the O. and C. lands) in Oregon, except power sites, to exploration, location, entry, and disposition under the United States Mining Laws. The act also validates mineral claims, if otherwise valid, located on the O. and C. lands during the period from August 28, 1937, to April 8, 1948.

(b) The procedure in the locating of mining claims, performance of annual labor, and the prosecution of mineral patent proceedings in connection with O. and C. lands is the same as provided by the United States Mining Laws and the general regulations in this part, and is also subject to the additional conditions and requirements hereinafter set forth.

§ 185.37b *Requirements for filing notices of locations of claims; descriptions.* (a) Where prior to April 8, 1948, a mining claim has been located upon O. and C. lands, the owner thereof must file for record, not later than October 5, 1948, in the land office of the land district in which the claim is situated, a copy of the notice of location of the claim. With respect to all mining claims located on O. and C. lands on or after April 8, 1948, the owner thereof must file for record, within 60 days of the date of such mining location, in the appropriate land office, a copy of the notice of location of the claim.

(b) If the location affects surveyed lands and the copy of location notice does not describe those legal subdivisions, section, township and range partly or wholly covered by the mining claim, the copy must be accompanied by a statement of the owner of the claim describing the legal subdivisions affected.

(c) If the location affects unsurveyed lands and the copy of location notice does not show the land described therein connected by course and distance to the nearest corner of the public land surveys and does not give the probable legal subdivisions affected if the lands were surveyed, the copy must be accompanied by a statement of the owner of the claim giving that information or satisfactory reasons for not doing so.

(d) The name and address of each owner of the claim should be furnished with the other data required by this section.

§ 185.37c *Requirement for filing statements of assessment work.* The owner of any unpatented mining claim located upon O. and C. lands must also file for record in the district land office in which the claim is situated, within 60 days after the expiration of any annual assessment year, a statement
as to the assessment work done or improvements made during the previous assessment year, or, as to compliance in lieu thereof, with any applicable relief act.

§ 185.37d *Restriction on use of timber; application for such use.* The owner of any unpatented mining claim located upon O. and C. lands on or after August 28, 1937, shall not acquire title, possessory or otherwise, to the timber, now or hereafter growing upon such claim. Such timber may be managed and disposed of under existing law or as may be provided by subsequent law. The owner of such unpatented mining claim, until such time as the timber is otherwise disposed of by the United States, if he wishes to cut and use so much of the timber upon his claim as may be necessary in the development and operation of his mine, shall file a written application with the district forester for permission to do so. The application shall set forth the estimated quantity and kind of timber desired and the use to which it will be put. The applicant shall not cut any of the timber prior to the approval of the application therefor.

§ 185.37e *Applications for final certificates and patents.* Applications for patents and final certificates in connection with mining claims located upon O. and C. lands on or after August 28, 1937 must be noted "Mining claims on O. and C. lands, under the act of April 8, 1948." All patents issued on such claims located on or after August 28, 1937, shall contain an appropriate reference to the act of April 8, 1948, and shall indicate that the patent is issued subject to the conditions and limitations of the act.

CROSS REFERENCE: For other regulations governing the revested and reconveyed lands, see Part 115 of this chapter.

SUBPART D—PROCEDURE TO OBTAIN PATENT

AUTHORITY: §§ 185.38 to 185.74 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 185.38 to 185.74 contained in Circular 430, Apr. 11, 1922, except as noted following sections affected. For editorial changes not otherwise indicated see item 3 of Note following table of contents of chapter.

LODE CLAIMS

§ 185.38 *Application for survey.* The claimant is required, in the first place, to have a correct survey of his claim made under authority of the proper regional cadastral engineer, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground.[14]

§ 185.39 *Survey must be made subsequent to recording notice of location.* The survey and plat of mineral claims required to be filed in the proper land office with application for patent must be made subsequent to the recording of the location of the claim (if the laws of the State or Territory or the regulations of the mining district require the notice of location to be recorded), and when the original location is made by survey of a mineral surveyor such location survey can not be substituted for that required by the statute, as above indicated.[15]

§ 185.40 *Plats and field notes of mineral surveys.* As to plats of survey of mining claims outside of the Territory of Alaska, the regional cadastral engineer will have three copies made which copies, with the original plat, will be filed and disposed of as follows: One plat and the original field notes to be retained in the survey office, one plat to be given the claimant for posting upon the claim; one plat and a copy of the field notes to be given the claimant for filing with the proper manager, to be finally transmitted by that officer, with other papers in the case, to the Bureau of Land Management, and one plat to be sent by the regional cadastral engineer, to the manager of the proper land district, to be retained in his files for future reference.

[Circ. 430, Apr. 11, 1922, as amended by Circ. 1529, 8 F. R. 6853]

§ 185.41 *Particulars to be observed in mineral surveys.* (a) The following particulars should be observed in the survey of every mining claim:

(1) The exterior boundaries of the claim, the number of feet claimed along the vein, and, as nearly as can be ascertained, the direction of the vein, and the number of feet claimed on the vein in each direction from the point of discovery or other well-defined place on the claim should be represented on the plat of survey and in the field notes.

(2) The intersection of the lines of the survey with the lines of conflicting prior surveys should be noted in the field notes and represented upon the plat.

(3) Conflicts with unsurveyed claims, where the applicant for survey does not claim the area in conflict, should be shown by actual survey.

(4) The total area of the claim embraced by the exterior boundaries should be stated, and also the area in conflict with each intersecting survey, substantially as follows:

	Acres
Total area of claim	10.50
Area in conflict with survey No. 302	1.56
Area in conflict with survey No. 948	2.33
Area in conflict with Mountain Maid lode mining claim, unsurveyed	1.48

(b) It does not follow that because mining surveys are required to exhibit all conflicts with prior surveys the areas of conflict are to be excluded. The field notes and plat are made a part of the application for patent, and care should be taken that the description does not inadvertently exclude portions intended to be retained. The application for patent should state the portions to be excluded in express terms.

[14] Application for authorization of survey should be made to the regional cadastral engineer of the appropriate Survey Office. In States which do not have a survey office, applications for survey should be made to the Director of the Bureau of Land Management, Washington, D. C.

[15] All matters relating to the duties of mineral surveyors, and to the field and office procedure to be observed in the execution of mineral surveys, are set forth in Chapter X of the Manual of Instructions for the Survey of the Public Lands of the United States, 1947.

§ 185.42 *Certificate of expenditures and improvements.* (a) The claimant at the time of filing the application for patent, or at any time within the 60 days of publication, is required to file with the manager a certificate of the office cadastral engineer that not less than $500 worth of labor has been expended or improvements made, by the applicant or his grantors, upon each location embraced in the application, or if the application embraces several contiguous locations held in common, that an amount equal to $500 for each location has been so expended upon, and for the benefit of, the entire group; that the plat filed by the claimant is correct; that the field notes of the survey, as filed, furnish such an accurate description of the claim as will, if incorporated in a patent, serve to identify the premises fully, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof.

(b) In case of a lode and mill-site claim in the same survey the expenditure of $500 must be shown upon the lode claim.

[Circ. 430, Apr. 11, 1922, as amended by Circ. 1529, 8 F. R. 6853]

§ 185.43 *Basis for certificate.*[16] The office cadastral engineer may derive his information upon which to base his certificate as to the value of labor expended or improvements made from the mineral surveyor who actually makes survey and examination of premises, insofar as such matters rest in the personal knowledge of the mineral surveyor. The mineral surveyor should specify with particularity and full detail the character and extent of such improvements. As to when and by whom the improvements were made and other essential matters not within such mineral surveyor's personal knowledge, recourse may be had by the office cadastral engineer to corroborated statements by persons possessing such personal knowledge, or the best evidence in this behalf otherwise obtainable. This showing should accompany the report of the mineral surveyor as to improvements.

[16] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

§ 185.44 *Mineral surveyor's report of expenditures and improvements.* (a) In the mineral surveyor's report of the value of the improvements all actual expenditures and mining improvements made by the claimant or his grantors, having a direct relation to the development of the claim, must be included in the estimate.

(b) The expenditures required may be made from the surface or in running a tunnel, drifts, or crosscuts for the development of the claim. Expenditures for drill holes for the purpose of prospecting and securing data upon which further development of a group of lode mining claims held in common may be based are available toward meeting the statutory provision requiring an expenditure of $500 as a basis for patent as to all of the claims of the group situated in close proximity to such common improvement. Improvements of any other character, such as buildings, machinery, or roadways, must be excluded from the estimate, unless it is shown clearly that they are associated with actual excavations, such as cuts, tunnels, shafts, etc., are essential to the practical development of and actually facilitate the extraction of mineral from the claim.

(c) Improvements made by a former locator who has abandoned his claim can not be included in the estimate, but should be described and located in the notes and plat.

§ 185.45 *Supplemental proof of expenditures and improvements.* If the value of the labor and improvements upon a mineral claim is less than $500 at the time of survey the mineral surveyor may file with the regional cadastral engineer supplemental proof showing $500 expenditure made prior to the expiration of the period of publication.

§ 185.46 *Amended mineral surveys.* (a) Inasmuch as amended surveys are ordered only by special instructions from the Bureau of Land Management, and the conditions and circumstances peculiar to each separate case and the object sought by the required amendment, alone govern all special matters relative to the manner of making such survey and the form and subject matter to be embraced in the field notes thereof, but few general rules applicable to all cases can be laid down.

(b) The expense of amended surveys, including amendment of plat and field notes, and office work in the public survey office will be borne by the claimant.

(c) The amended survey must be made in strict conformity with, or be embraced within, the lines of the original survey. If the amended and original surveys are identical, that fact must be clearly and distinctly stated in the field notes. If not identical, a bearing and distance must be given from each established corner of the amended survey to the corresponding corner of the original survey. The lines of the original survey, as found upon the ground, must be laid down upon the preliminary plat in such manner as to contrast and show their relation to the lines of the amended survey.

§ 185.47 *Mineral surveyors may not act in certain matters.* The duty of a mineral surveyor in any particular case ceases when he has executed the survey and returned the field notes and preliminary plat, with his report, to the regional cadastral engineer. He will not be allowed to prepare for the mining claimant the papers in support of his application for patent. He is not permitted to combine the duties of surveyor and notary public in the same case by administering oaths. It is preferable that both preliminary and final oaths of assistants should be taken before some officer duly authorized to administer oaths, other than the mineral surveyor. In cases, however, where great delay, expense, or inconvenience would result from a strict compliance with this section, the mineral surveyor is authorized to administer the necessary oaths to his assistants, but in each case where this is done, he will submit to the proper regional cadastral engineer a full written report of the circumstances which required his stated action; otherwise he must have absolutely nothing to do with the case, except in his official capacity as surveyor. He will not employ field assistants interested therein in any manner.

[Circ. 430, Apr. 11, 1922, as amended at [8 F. R. 7024]

CROSS REFERENCE: For practitioner disqualifications, see § 1.5 of this title.

§ 185.48 *Parties who may not assist in making surveys.* The employing of claimants, their attorneys, or parties in interest, as assistants in making surveys of mineral claims will not be allowed.

§ 185.49 *Contract for surveys.* (a) The claimant is required, in all cases, to make satisfactory arrangements with the surveyor for the payment for his services

and those of his assistants in making the survey, as the United States will not be held responsible for the same.[17]

(b) Neither the regional cadastral engineer nor the regional administrator has jurisdiction to settle differences relative to the payment of charges for field work, between mineral surveyors and claimants. These are matters of private contract and must be enforced in the ordinary manner, i. e., in the local courts. The Department has, however, authority to investigate charges affecting the official actions of mineral surveyors, and will, on sufficient cause shown, suspend or revoke their appointment.

§ 185.50 *Appointment of mineral surveyors.* (a) Pursuant to section 2334 of the Revised Statutes (30 U. S. C. 39), each regional admnistrator will appoint as surveyors for the survey of mining claims applicants found to be competent, to the extent needed to meet the demand for that class of work. Each appointee shall qualify as prescribed by the regional administrator and shall furnish a performance bond of not less than $5,000 before entering on duty. Each mineral surveyor shall be eligible to survey mining claims in the States within the region in which he is appointed and in adjoining States. Each regional administrator shall maintain a register showing the names and addresses of mineral surveyors appointed for the region and eligible for the survey of mining claims. The regional administrator shall furnish the regional administrator of each adjoining region with a copy of such register, and shall advise them of any changes therein.

(b) A mineral claimant may employ any United States mineral surveyor qualified as indicated in paragraph (a) of this section to make the survey of his claim. All expenses of the survey of mining claims and the publication of the required notices of application for patent are to be borne by the mining claimants.

(R. S. 2478, 43 U. S. C. 1201)

[Circular 1747 February 14, 1950.]

§ 185.51 *Payment of charges of the survey office.* With regard to the platting of the claim and other office work in the survey office, that office will make an estimate of the cost thereof, which amount the claimant will deposit with it to be passed to the credit of the fund created by "deposits by individuals for surveying public lands."

§ 185.52 *Plat and notice to be posted on claim.* The claimant is required to post a copy of the plat of survey in a conspicuous place upon the claim, together with notice of his intention to apply for a patent therefor, which notice will give the date of posting, the name of the claimant, the name of the claim, the number of the survey, the mining district and county, and the names of adjoining and conflicting claims as shown by the plat survey. Too much care cannot be exercised in the preparation of this notice, inasmuch as the data therein are to be repeated in the other notices required by the statute, and upon the accuracy and completeness of these notices will depend, in a great measure, the regularity and validity of the proceedings for patent.

§ 185.53 *Proof of posting on the claim.* After posting the said plat and notice upon the premises the claimant will file with the proper manager a copy of such plat and the field notes of survey of the claim, accompanied by the statement of at least two credible witnesses that such plat and notice are posted conspicuously upon the claim, giving the date and place of such posting, a copy of the notice so posted to be attached to and form a part of said statement.

§ 185.54 *Application for patent.* (a) At the time the proof of posting is filed, as required by § 185.53, the claimant must file an application for patent showing that he has the possessory right to the claim, in virtue of a compliance by himself (and by his grantors, if he claims by purchase) with the mining rules, regulations, and customs of the mining district, State, or Territory in which the claim lies, and with the mining laws of Congress, such statement to narrate briefly, but as clearly as possible, the facts constituting such compliance, the origin of his possession, and the basis of his claim to a patent. The application should contain a full description of the kind and character of the vein or lode and should state whether ore has been extracted therefrom; and if so, in what amount and of what value. It should also show the precise place within the limits of each of the locations embraced in the application where the vein or lode has been exposed or discovered and the width thereof. The showing in these regards should contain sufficient data to enable representatives of the Government to confirm the same by examination in the field and also enable the Bureau of Land Management to determine whether a valuable deposit of mineral actually exists within the limits of each of the locations embraced in the application.[18]

(b) Every application for patent, based on a mining claim located after August 1, 1946, shall state whether the claimant has or has not had any direct or indirect part in the development of the atomic bomb project. The application must set forth in detail the exact nature of the claimant's participation in the project, and must also state whether as a result of such participation he acquired any confidential, official information as to the existence of deposits of uranium, thorium, or other fissionable source materials in the lands covered by his application.

[Circ. 430, Apr. 11, 1922, as amended by Circ. 1658, 12 F. R. 6831]

CROSS REFERENCE: For definition of fissionable source materials, see Atomic Energy Commission's regulation, 10 CFR 40.2.

§ 185.55 *Procedure in case of conflicts of record.* Before approving for publication any notice of an application for mineral patent, the manager will be particular to see that it includes no land which is embraced in a prior or pending application for patent or entry, or for which publication is pending or has been made by any other claimants, and if, in his opinion, after investigation, it should appear that notice of a mineral application should not, for this or other reasons, be approved for publication, he should formally reject the same, giving the reasons therefor, and allow the applicant 30 days for appeal under the Rules of Practice, Part 221 of this chapter.

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[17] All matters relating to the duties of mineral surveyors, and to the field and office procedure to be observed in the execution of mineral surveys, are set forth in Chapter X of the Manual of Instructions for the Survey of the Public Lands of the United States, 1947.

[18] Blank forms of applications for mineral patents are not furnished by the Bureau of Land Management.

The application should be filed in duplicate. See 52 L. D. 190.

§ 185.56 *Abstract of title.* (a) The application for patent must be supported by a copy of each location notice, certified by the legal custodian of the record thereof, and also by an abstract of title of each claim, certified by the legal custodian of the records of transfers or by a duly authorized abstracter of titles. The certificate must state that no conveyances affecting, or purporting to affect, the title to the claim or claims appear of record other than those set forth.

(b) Outside of the Territory of Alaska the application for patent will be received and filed if the abstract is brought down to a day reasonably near the date of the presentation of the application and shows full title in the applicant, who must as soon as practicable thereafter file a supplemental abstract brought down so as to include the date of the filing of the application. Publication will not be ordered until the showing as to title is thus completed and the manager is satisfied that full title was in the applicant on the day of the filing of the application.

CROSS REFERENCE: For qualified abstracters, see Part 211 of this chapter.

§ 185.57 *Evidence relating to destroyed or lost records.* In the event of the mining records in any case having been destroyed by fire or otherwise lost, a statement of the fact should be made, and secondary evidence of possessory title will be received, which may consist of the statement of the claimant, supported by those of any other parties cognizant of the facts relative to his location, occupancy, possession, improvements, etc.; and in such case of lost records, any deeds, certificates of location or purchase, or other evidence which may be in the claimant's possession and tend to establish his claim, should be filed.

§ 185.58 *Publication in newspaper and posting in land office.* Upon the receipt of applications for mineral patent and accompanying papers, if no reason appears for rejecting the application, the manager will, at the expense of the claimant (who must furnish the agreement of the publisher to hold applicant for patent alone responsible for charges of publication), publish a notice of such application for the period of 60 days in a newspaper published nearest to the claim, and will post a copy of such notice in his office for the same period. If the notice is published in a daily paper, it shall be published in the Wednesday issue for nine consecutive weeks; if weekly, in nine consecutive issues; if semi-weekly or tri-weekly, in the issue of the same day of each week for nine consecutive weeks. In all cases the first day of issues shall be excluded in estimating the period of 60 days.

[Circ. 1612, 11 F.R. 1820]

§ 185.59 *Contents of published notice.* The notices published and posted as required by the preceding section must embrace all the data given in the notice posted upon the claim. In addition to such data the published notice must further indicate the locus of the claim by giving the connecting line, as shown by the field notes and plat, between a corner of the claim and a United States mineral monument or a corner of the public survey, and thence the boundaries of the claim by courses and distances.

§ 185.60 *Manager to designate newspaper.* The manager shall have the notice of application for patent published in a paper of established character and general circulation, to be by him designated as being the newspaper published nearest the land.

§ 185.61 *Proof by applicant of publication and posting.* After the 60-day period of newspaper publication has expired, the claimant will furnish from the office of publication a sworn statement that the notice was published for the statutory period, giving the first and last day of such publication, and his own statement showing that the plat and notice aforesaid remained conspicuously posted upon the claim sought to be patented during said 60-day publication, giving the dates.

§ 185.62 *Payment of purchase price and statement of charges and fees.* Upon the filing of the statement required by the preceding section, the manager will, if no adverse claim was filed in his office during the period of publication, and no other objection appears, permit the claimant to pay for the land to which he is entitled at the rate of $5 for each acre and $5 for each fractional part of an acre, except as otherwise provided by law, issuing the usual receipt therefor. The claimant will also make a statement of all charges and fees paid by him for publication and surveys, together with all fees and money paid the manager of the land office, after which the complete record will be forwarded to the Director of the Bureau of Land Management and a patent issued thereon if found regular.

§ 185.63 *Trustee to disclose nature of trust.* Any party applying for patent as trustee must disclose fully the nature of the trust and the name of the cestui que trust; and such trustee, as well as the beneficiaries, must furnish satisfactory proof of citizenship; and the names of beneficiaries, as well as that of the trustee, must be inserted in the final certificate of entry.

§ 185.64 *Allowance of entry; transfers subsequent to application not recognized.* No entry will be allowed until the manager has satisfied himself, by careful examination, that proper proofs have been filed upon the points indicated in the law and official regulations.[19] Transfers made subsequent to the filing of the application for patent will not be considered, but entry will be allowed and patent issued in all cases in the name of the applicant for patent, the title conveyed by the patent, of course, in each instance inuring to the transferee of such applicant where a transfer has been made pending the application for patent.

§ 185.65 *Failure to prosecute application with diligence.* The failure of an applicant for patent to a mining claim to prosecute his application to completion, by filing the necessary proofs and making payment for the land, within a reasonable time after the expiration of the period of publication of notice of the application, or after the termination of adverse proceedings in the courts, constitutes a waiver by the applicant of all rights obtained by the earlier proceedings upon the application.

§ 185.66 *Resumption of patent proceedings after suspension due to adverse claim or protest.* The proceedings necessary to the completion of an application for patent to a mining claim, against which an adverse claim or protest has been filed, if taken by the applicant at the first opportunity afforded therefor under the law and departmental practice, will be as effective as if taken at the date when, but for the adverse claim or protest, the proceedings on the application could have been completed.

[19] If the proof is found regular, certificate should issue even though a protest may have been filed but the claimant should be advised that patent will be withheld by the Bureau of Land Management pending a report by the regional administrator upon the bona fides of the claim.

MILL SITES

§ 185.67 *Application for patent.* (a) Land entered as a mill site must be shown to be nonmineral. Mill sites are simply auxiliary to the working of mineral claims. Section 2337 of the Revised Statutes (30 U. S. C. 42) provides for the patenting of mill sites.

(b) To avail themselves of this provision of law, parties holding the possessory right to a vein or lode claim, and to a piece of nonmineral land not contiguous thereto for mining or milling purposes, not exceeding the quantity allowed for such purpose by section 2337, or prior laws, under which the land was appropriated, the proprietors of such vein or lode may file in the proper land office their application for a patent, which application, together with the plat and field notes, may include, embrace, and describe, in addition to the vein or lode claim, such noncontiguous mill site, and after due proceedings as to notice, etc., a patent will be issued conveying the same as one claim. The owner of a patented lode may, by an independent application, secure a mill site, if good faith is manifest in its use or occupation in connection with the lode and no adverse claim exists.

§ 185.68 *Mill sites applied for in conjunction with a lode claim.* Where the original survey includes a lode claim and also a mill site the lode claim should be described in the plat and field notes as "Sur. No. 37, A," and the mill site as "Sur. No. 37, B," or whatever may be its appropriate numerical designation; the course and distance from a corner of the mill site to a corner of the lode claim to be invariably given in such plat and field notes, and a copy of the plat and notice of application for patent must be conspicuously posted upon the mill site as well as upon the vein or lode claim for the statutory period of 60 days. In making the entry no separate receipt or certificate need be issued for the mill site, but the whole area of both lode and mill site will be embraced in one entry, the price being $5 for each acre and fractional part of an acre embraced by such lode and mill site claim.

§ 185.69 *Mill sites for quartz mills or reduction works.* In case the owner of a quartz mill or reduction works is not the owner or claimant of a vein or lode claim the law permits him to make application therefor in the same manner prescribed for mining claims, and after due notice and proceedings, in the absence of a valid adverse filing, to enter and receive a patent for his mill site at the price named in the preceding section.

§ 185.70 *Proof of nonmineral character.* In every case there must be satisfactory proof that the land claimed as a mill site is not mineral in character, which proof may, where the matter is unquestioned, consist of the statement of two or more persons capable, from acquaintance with the land to testify understandingly.

PLACERS

§ 185.71 *Application for patent.* (a) The proceedings to obtain patents for placer claims, including all forms of mineral deposits excepting veins of quartz or other rock in place, are similar to the proceedings prescribed for obtaining patents for vein or lode claims; but where a placer claim shall be upon surveyed lands, and conforms to legal subdivisions, no further survey or plat will be required. Where placer claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands.

(b) Careful attention by applicants and managers to the proceedings mentioned will enable them to act understandingly and make such slight modifications in the notice, or otherwise, as may be necessary in view of the different nature of the two classes of claims; the price of placer claims being fixed, however, at $2.50 per acre or fractional part of an acre.

CROSS REFERENCE: For patents, generally, see Part 108 of this chapter.

§ 185.72 *Proof of improvements for patent.* The proof of improvements must show their value to be not less than $500 and that they were made by the applicant for patent or his grantors. This proof should consist of the statement of two or more disinterested witnesses.

§ 185.73 *Data to be filed in support of application.* (a) In placer applications, in addition to the recitals necessary in and to both vein or lode and placer applications, the placer application should contain, in detail, such data as will support the claim that the land applied for is placer ground containing valuable mineral deposits not in vein or lode formation and that title is sought not to control water courses or to obtain valuable timber but in good faith because of the mineral therein. This statement, of course, must depend upon the character of the deposit and the natural features of the ground, but the following details should be covered as fully as possible: If the claim be for a deposit of placer gold, there must be stated the yield per pan, or cubic yard, as shown by prospecting and development work, distance to bedrock, formation and extent of the deposit, and all other facts upon which he bases his allegation that the claim is valuable for its deposits of placer gold. If it be a building stone or other deposit than gold claimed under the placer laws, he must describe fully the kind, nature, and extent of the deposit, stating the reasons why same is by him regarded as a valuable mineral claim. He will also be required to describe fully the natural features of the claim; streams, if any, must be fully described as to their course, amount of water carried, fall within the claim; and he must state kind and amount of timber and other vegetation thereon and adaptability to mining or other uses.

(b) If the claim be all placer ground, that fact must be stated in the application and corroborated by accompanying proofs; if of mixed placers and lodes, it should be so set out, with a description of all known lodes situated within the boundaries of the claim. A specific declaration, such as is required by section 2333, Revised Statutes (30 U. S. C. 37) must be furnished as to each lode intended to be claimed. All other known lodes are, by the silence of the applicant, excluded by law from all claim by him, of whatsoever nature, possessory or otherwise.

(c) While these data are required as a part of the mineral surveyor's report in case of placers taken by special survey, it is proper that the application for patent incorporate these facts.

(d) Inasmuch as in case of claims taken by legal subdivisions, no report by a mineral surveyor is required, the claimant, in his application in addition to the data above required, should describe in detail the shafts, cuts, tunnels, or other workings claimed as improvements, giving their dimensions, value, and the course and distance thereof to the nearest corner of the public surveys.

(e) The statement as to the description and value of the improvements must be corroborated by the statements of two disinterested witnesses.[20]

[20] The proof showing must be made in duplicate. See 51 L. D. 265 and 52 L. D. 190.

(f) Applications awaiting entry, whether published or not, must be made to conform to this part, with respect to proof as to the character of the land. Entries already made will be suspended for such additional proofs as may be deemed necessary in each case.

(g) Managers are instructed that if the proofs submitted in placer applications under this section are not satisfactory as showing the land as a whole to be placer in character, or if the claims impinge upon or embrace water courses or bodies of water, and thus raise a doubt as to the bona fides of the location and application, or the character and extent of the deposit claimed thereunder, to call for further evidence, or if deemed necessary, request the specific attention of the regional administrator thereto in connection with the usual notification to him and suspend further action on the application until a report thereon is received from that officer.

§ 185.74 *Applications for placers containing known lodes.* Applicants for patent to a placer claim, who are also in possession of a known vein or lode included therein, must state in their application that the placer includes such vein or lode. The published and posted notices must also include such statement. If veins or lodes lying within a placer location are owned by other parties, the fact should be distinctly stated in the application for patent and in all the notices. But in all cases whether the lode is claimed or excluded, it must be surveyed and marked upon the plat, the field notes and plat giving the area of the lode claim or claims and the area of the placer separately. An application which omits to claim such known vein or lode must be construed as a conclusive declaration that the applicant has no right of possession to the vein or lode. Where there is no known lode or vein, the fact must appear by the statement of two or more witnesses.

SUBPART E—GENERAL

AUTHORITY: §§ 185.75 to 185.97 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 185.75 to 185.97 contained in Circular 430, Apr. 11, 1922, except as noted following sections affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

CITIZENSHIP

§ 185.75 *Citizenship of corporations and of associations acting through agents.* The proof necessary to establish the citizenship of applicants for mining patents must be made in the following manner: In case of an incorporated company, a certified copy of its charter or certificate of incorporation must be filed. In case of an association of persons unincorporated, the statement of their duly authorized agent, made upon his own knowledge or upon information and belief, setting forth the residence of each person forming such association, must be submitted. This statement must be accompanied by a power of attorney from the parties forming such association, authorizing the person who makes the citizenship showing to act for them in the matter of their application for patent.

§ 185.76 *Citizenship of individuals.* (a) In case of an individual or an association of individuals who do not appear by their duly authorized agent, the statement of each applicant, showing whether he is a native or naturalized citizen, when and where born, and his residence, will be required.

(b) In case an applicant has declared his intention to become a citizen or has been naturalized, his statement must show the date, place, and the court before which he declared his intention, or from which his certificate of citizenship issued, and present residence.

POSSESSORY RIGHT

§ 185.78 *Right by occupancy.* (a) The provisions of section 2332, Revised Statutes (30 U. S. C. 38), greatly lessen the burden of proof, more especially in the case of old claims located many years since, the records of which, in many cases, have been destroyed by fire, or lost in other ways during the lapse of time, but concerning the possessory right to which all controversy or litigation has long been settled.

(b) When an applicant desires to make his proof of possessory right in accordance with this provision of law, he will not be required to produce evidence of location, copies of conveyances, or abstracts of title, as in other cases, but will be required to furnish a duly certified copy of the statute of limitation of mining claims for the State or Territory, together with his statement giving a clear and succinct narration of the facts as to the origin of his title, and likewise as to the continuation of his possession of the mining ground covered by his application; the area thereof; the nature and extent of the mining that has been done thereon; whether there has been any opposition to his possession, or litigation with regard to his claim, and if so, when the same ceased; whether such cessation was caused by compromise or by judicial decree, and any additional facts within the claimant's knowledge having a direct bearing upon his possession and bona fides which he may desire to submit in support of his claim.

§ 185.79 *Certificate of court required.* There should likewise be filed a certificate, under seal of the court having jurisdiction of mining cases within the judicial district embracing the claim, that no suit or action of any character whatever involving the right of possession to any portion of the claim applied for is pending, and that there has been no litigation before said court affecting the title to said claim or any part thereof for a period equal to the time fixed by the statute of limitations for mining claims in the State or Territory as aforesaid other than that which has been finally decided in favor of the claimant.

§ 185.80 *Corroborative proof required.* The claimant should support his narrative of facts relative to his possession, occupancy, and improvements by corroborative testimony of any disinterested person or persons of credibility who may be cognizant of the facts in the case and are capable of testifying understandingly in the premises.

ADVERSE CLAIMS

§ 185.81 *Filing of claim.* (a) An adverse claim must be filed with the manager of the land office where the application for patent is filed or with the manager of the district in which the land is situated at the time of filing the adverse claim. The claim may be filed by the adverse claimant, or by his duly authorized agent or attorney in fact cognizant of the facts stated.

(b) Where an agent or attorney in fact files the adverse claim he must furnish proof that he is such agent or attorney.

(c) The agent or attorney in fact must sign the statement of the adverse claim within the land district where the claim is situated, stating that it was so signed.

§ 185.82 *Statement of claim.* (a) The adverse claim must fully set forth the nature and extent of the interference or conflict; whether the adverse party claims as a purchaser for valuable consideration or as a locator. If the former, a certified copy of the original location, the original conveyance, a duly certified

copy thereof, or an abstract of title from the office of the proper recorder should be furnished, or if the transaction was a merely verbal one he will narrate the circumstances attending the purchase, the date thereof, and the amount paid; which facts should be supported by the statement of one or more witnesses, if any were present at the time, and if he claims as a locator he must file a duly certified copy of the location from the office of the proper recorder.

(b) In order that the "boundaries" and "extent" of the claim may be shown, it will be incumbent upon the adverse claimant to file a plat showing his entire claim, its relative situation or position with the one against which he claims, and the extent of the conflict: Provided, however, That if the application for patent describes the claim by legal subdivisions, the adverse claimant, if also claiming by legal subdivisions, may describe his adverse claim in the same manner without further survey or plat. If the claim is not described by legal subdivisions it will generally be more satisfactory if the plat thereof is made from an actual survey by a mineral surveyor and its correctness officially certified thereon by him.

§ 185.83 *Action by manager.* Upon the adverse claim being filed within the 60-day period of publication, the manager will immediately give notice in writing to the parties that such adverse claim has been filed, informing them that the party who filed the adverse claim will be required within 30 days from the date of such filing to commence proceedings in a court of competent jurisdiction to determine the question of right of possession, and to prosecute the same with reasonable diligence to final judgment, and that, should such adverse claimant fail to do so, his adverse claim will be considered waived and the application for patent be allowed to proceed upon its merits.

§ 185.84 *Patent proceedings stayed when adverse claim is filed; exception.* When an adverse claim is filed as aforesaid, the manager will endorse upon the same the precise date of filing and preserve a record of the date of notifications issued thereon; and thereafter all proceedings on the application for patent will be stayed with the exception of the completion of the publication and posting of notices and plat and the filing of the necessary proof thereof, until the controversy shall have been finally adjudicated in court or the adverse claim waived or withdrawn.

§ 185.85 *Termination of adverse suit.* (a) Where an adverse claim has been filed and suit thereon commenced within the statutory period and final judgment rendered determining the right of possession, it will not be sufficient to file with the manager a certificate of the clerk of the court setting forth the facts as to such judgment, but the successful party must, before he is allowed to make entry, file a certified copy of the judgment roll, together with the other evidence required by section 2326, Revised Statutes (30 U. S. C. 30), and a certificate of the clerk of the court under the seal of the court showing, in accord with the record facts of the case, that the judgment mentioned and described in the judgment roll aforesaid is a final judgment; that the time for appeal therefrom has, under the law, expired, and that no such appeal has been filed, or that the defeated party has waived his right to appeal. Other evidence showing such waiver or an abandonment of the litigation may be filed.

(b) Where such suit has been dismissed, a certificate of the clerk of the court to that effect or a certified copy of the order of dismissal will be sufficient.

(c) After an adverse claim has been filed and suit commenced, a relinquishment or other evidence of abandonment of the adverse claim will not be accepted, but the case must be terminated and proof thereof furnished as required by the last two paragraphs.

§ 185.86 *Certificate required when no suit commenced.* Where an adverse claim has been filed but no suit commenced against the applicant for patent within the statutory period, a certificate to that effect by the clerk of the State court having jurisdiction in the case, and also by the clerk of the district court of the United States for the district in which the claim is situated, will be required.

FEES

§ 185.87 *Fees of managers.* The fee payable to the manager for filing and acting upon applications for mineral-land patents is $10, to be paid by the applicant for patent at the time of filing, and the like sum is payable by an adverse claimant at the time of filing his adverse claim.

CHARGES FOR NEWSPAPER PUBLICATION

§ 185.88 *Charges not to exceed legal rates.* (a) The charge for the publication of notice of application for patent in a mining case in all districts, exclusive of Alaska, shall not exceed the legal rates allowed by the laws of the several States for the publication of legal notices wherein the notice is published, and in no case shall the charge exceed $7.50 for each 10 lines of space occupied. Such charge shall be accepted as full payment for the publication for the entire period required by law.

(b) It is expected that these notices shall not be so abbreviated as to curtail the description essential to a perfect notice, and on the other hand that they shall not be of unnecessary length. The printed matter must be set solid without paragraphing or any display in the heading and shall be in the usual body type used in legal notices. If other type is used, no allowance will be made for additional space on that account. The number of solid lines only used in advertising by actual count will be allowed. All abbreviations and copy must be strictly followed. The following is a sample of advertisement set up in accordance with Government requirements and contains all the essential data necessary for publication:

M. A. No. 04421, U. S. Land Office, Elko, Nevada, October 5, 1921. Notice is hereby given that the Jarbidge Buhl Mining Company by W. H. Hudson, attorney in fact, of Jarbidge, Nevada, has made application for patent to the Altitude, Altitude No. 1, Altitude No. 3, and Altitude Annex, lode mining claims, Survey No. 4470, in unsurveyed T. 46 N., R. 58 E., M. D. B. and M., in the Jarbidge mining district, Elko County, Nevada, described as follows: Beginning at corner No. 1, Altitude No. 3, whence the quarter corner of the south boundary of sec. 34, T. 46 N., R. 58 E., M. D. B. and M., bears south 41°54′ west 7285.63 feet, thence north 20°14′ west 1500 feet to corner No. 2 of said lode; thence north 69°46′ east 569 feet to corner No. 3 of said lode; thence south 20°14′ east 417.5 feet to corner 2, Altitude No. 1; thence north 69°46′ east 1606.1 feet to corner No. 3, Altitude lode; thence south 20°14′ east 1500 feet, to corner No. 4 of said lode; thence south 69°46′ west 1606.1 feet, to corner No. 1, Altitude No. 1 lode; thence north 20°14′ west 417.5 feet to corner No. 4, Altitude No. 3; thence south 69°46′ west 569 feet to point of beginning. There are no adjoining or conflicting claims. The location notices are recorded in Book 17, pages 373 and 374, and in Book 15, pages 52 and 53, mining locations, Elko County, Nevada, John E. Robbins, Manager.

(c) For the publication of citations in contests or hearings, involving the character of lands, the charges may not exceed the rates provided for similar notices by the law of the State, and shall not exceed $12 for five publications in a weekly newspaper, or $15 for publication in a daily newspaper for 30 days. Such

charge shall be accepted as full payment for all the matter so published and for the full period required.

[Circ. 943, June 18, 1934, as amended by Circ. 1612, 11 F. R. 1820]

PROTESTS, CONTESTS, CONFLICTS, AND SEGREGATIONS

§ 185.89 *Protest against mineral applications.* At any time prior to the issuance of patent, protest may be filed against the patenting of the claim as applied for, upon any ground tending to show that the applicant has failed to comply with the law in any matter essential to a valid entry under the patent proceedings. Such protest cannot, however, be made the means of preserving a surface conflict lost by failure to adverse or lost by the judgment of the court in an adverse suit. One holding a present joint interest in a mineral location included in an application for patent who is excluded from the application, so that his interest would not be protected by the issue of patent thereon, may protest against the issuance of a patent as applied for, setting forth in such protest the nature and extent of his interest in such location, and such a protestant will be deemed a party in interest entitled to appeal. This results from the holding that a co-owner excluded from an application for patent does not have an "adverse" claim within the meaning of sections 2325 and 2326 of the Revised Statutes. (30 U. S. C. 29, 30). (See Turner v. Sawyer, 150 U. S. 578–586, 37 L. ed. 1189–1191.)

§ 185.90 *Procedure in contest cases.* The Rules of Practice, Part 221 of this chapter, in cases before the United States district land offices, the Bureau of Land Management, and the Department of the Interior will, so far as applicable, govern in all cases and proceedings arising in contests and hearings to determine the character of lands.

§ 185.91 *Presumption as to land returned as mineral.* Public land returned upon the survey records as mineral shall be withheld from entry as agricultural land until the presumption arising from such a return shall be overcome.

§ 185.92 *Procedure to dispute record character of land.* (a) When lands returned as mineral are sought to be entered as agricultural under laws which require the submission of final proof after due notice by publication and posting, the filing of the proper nonmineral statement in the absence of allegations that the land is mineral will be deemed sufficient as a preliminary requirment. A satisfactory showing as to character of land must be made when final proof is submitted.

(b) In case of application to enter, locate, or select such lands as agricultural, under laws in which the submission of final proof after due publication and posting is not required, notice thereof must first be given by publication for 60 days and posting in the local office during the same period, and affirmative proof as to the character of the land submitted. In the absence of allegations that the land is mineral, and upon compliance with this requirement, the entry, location, or selection will be allowed, if otherwise regular.

(c) Where as against the claimed right to enter such lands as agricultural it is alleged that the same are mineral, or are applied for as mineral lands, the proceedings in this class of cases will be in the nature of a contest, and the practice will be governed by the rules in force in contest cases.

§ 185.93 *Testimony at hearings to determine character of lands.* (a) At hearings to determine the character of lands the claimants and witnesses will be thoroughly examined with regard to the character of the land; whether the same has been thorougly prospected; whether or not there exists within the tract or tracts claimed any lode or vein of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, or copper, or other valuable deposit which has ever been claimed, located, recorded, or worked; whether such work is entirely abandoned, or whether occasionally resumed; if such lode does exist, by whom claimed, under what designation, and in which subdivision of the land it lies; whether any placer mine or mines exist upon the land; if so, what is the character thereof, whether of the shallow-surface description, or of the deep cement, blue lead, or gravel deposits; to what extent mining is carried on when water can be obtained, and what the facilities are for obtaining water for mining purposes; upon what particular 10-acre subdivisions mining has been done, and at what time the land was abandoned for mining purposes, if abandoned at all. In every case, where practicable, an adequate quantity or number of representative samples of the alleged mineral-bearing matter or material should be offered in evidence, with proper identification, to be considered in connection with the record, with which they will be transmitted upon each appeal that may be taken. Testimony may be submitted as to the geological formation and development of mineral on adjoining or adjacent lands and their relevancy.

(b) The testimony should also show the agricultural capacities of the land, what kind of crops are raised thereon, the value thereof; the number of acres actually cultivated for crops of cereals or vegetables, and within which particular 10-acre subdivision such crops are raised; also which of these subdivisions embrace the improvements, giving in detail the extent and value of the improvements, such as house, barn, vineyard, orchard, fencing, etc., and mining improvements.

(c) The testimony should be as full and complete as possible; and in addition to the leading points indicated above, where an attempt is made to prove the mineral character of lands which have been entered under the agricultural laws, it should show at what date, if at all, valuable deposits of minerals were first known to exist on the lands.

§ 185.94 *Segregation of mineral from non-mineral land.* Where a survey is necessary to set apart mineral from non-mineral land, the appropriate regional administrator will have special instructions prepared outlining the procedure to be followed in the required survey. The survey shall not be begun until such special instructions have been approved by the Director, Bureau of Land Management, which approval will constitute formal authorization therefor. The survey will be executed at the expense of the United States. Upon acceptance of the survey by the Director, the triplicate copy of the plat thereof will be filed in the proper land office as a basis for the disposal of the non-mineral land shown thereon. The land office will, in all cases, serve notice on the mineral claimants of

the issuance of the authority for the survey.[21]

(R. S. 2478; 43 U. S. C. 1201)

[Circular No. 1767 SEPTEMBER 22, 1950.]

§ 185.95 *Effect of decision that land is mineral.* The fact that a certain tract of land is decided upon testimony to be mineral in character is by no means equivalent to an award of the land to a miner. In order to secure a patent for such land, he must proceed as in other cases, in accordance with this part.

§ 185.96 *Report of approval of mineral survey.* Promptly upon the approval of a mineral survey, the office cadastral engineer will advise both the Bureau of Land Management and the appropriate district land office, by letter (Form 4-286), of the date of approval, number of the survey, name and area of the claim, name and survey number of each approved mineral survey with which actually in conflict, name and address of the applicant for survey, and name of the mineral surveyor who made the survey; and will also briefly describe therein the locus of the claim, specifying each legal subdivision or portion thereof, when upon surveyed lands, covered in whole or in part by the survey; but no segregation of any such claim upon the official township-survey records will be made until mineral entry has been made and approved for patent, unless otherwise directed by the Bureau of Land Management.

§ 185.97 *Non-mineral entry of residue of subdivisions invaded by mining claims.* (a) The manager will accept and approve any application (if otherwise regular), to make a non-mineral entry of the residue of any original lot or legal subdivision which is invaded by mining claims if the tract has already been lotted to exclude such claims. If not so lotted, and if the original lot or legal subdivision is invaded by patented mining claims, or by mining claims covered by pending applications for patent which the non-mineral applicant does not desire to contest, or by approved mining claims of established mineral character, the manager will accept and approve the application (if otherwise regular), exclusive of the conflict with the mining claims. Before authorizing publication the manager will advise the regional administrator as to the need for a plat to segregate the mineral from the non-mineral land. If no objection appears, the regional administrator will direct the regional chief, Division of Cadastral Engineering, to prepare the necessary supplemental plat of the section or sections involved to designate the non-mineral portion of each original lot or subdivision by appropriate lot number and area, specifying the particular mining claims or portions thereof which should be segregated.

(b) The manager will allow no non-mineral application for any portion of an original lot or 40-acre legal subdivision, where the tract has not been lotted to show the reduced area by reason of approved surveys of mining claims for which applications for patent have not been filed, until the non-mineral applicant submits a satisfactory showing that such surveyed claims are in fact mineral in character. Applications to have lands which are asserted to be mineral, or mining locations, segregated by survey with a view to the non-mineral appropriation of the remainder, will be made to the manager of the land office. Such applications must be supported by a written statement of the party in interest, duly corroborated by two or more disinterested persons, or by such other or further evidence as may be required, that the land sought to be segregated as mineral is in fact mineral in character.

(R. S. 2478; 43 U. S. C. 1201)

[Circ. 430, Apr. 11, 1922, as amended by Circ. 1337, Oct. 5, 1934 and

Circular No. 1767, SEPTEMBER 22, 1950.]

TEMPORARY DEFERMENT OF ASSESSMENT WORK UNDER CERTAIN CONDITIONS

AUTHORITY: §§ 185.98 to 185.103, issued under secs. 1-5, Pub. Law 115, 81st Cong.

Source: Secs. 185.98 to 185.103 contained in Circular 1747, February 14, 1950.

§ 185.98 *Statutory authority.* The act of June 21, 1949 (Pub. Law 115, 81st Cong.), provides for the temporary deferment in certain unavoidable contingencies of the performance of annual assessment work on mining claims held by location in the United States. The relief under this act is in addition to any other relief available under any other act of Congress with respect to the suspension of annual assessment work on mining claims.

§ 185.99 *Conditions under which deferment may be granted.* The deferment may be granted where any mining claim or group of claims in the United States is surrounded by lands over which a right-of-way for the performance of assessment work has been denied or is in litigation or is in the process of acquisition under State law or where other legal impediments exist which affect the right of the claimant to enter upon the surface of such claim or group of claims or to gain access to the boundaries thereof.

§ 185.100 *Filing of petition for deferment, contents.* (a) In order to obtain temporary deferment, the claimant must file with the manager of the land office for the district in which the lands are situated or with the regional administrator for the State if there is no land office in the State, a petition in duplicate requesting such deferment. No particular form of petition is required, but the applicant must attach to one copy thereof a copy of the notice to the public required by the act which shows that it has been filed or recorded in the office in which the notices or certificates of location were filed or recorded. The petition and duplicate should be signed by at least one of the owners of each of the locations involved, shall give the names of the claims, dates of location, and the date of the beginning of the one year period for which deferment is requested.

(b) If the petition is based upon the denial of a right-of-way, it must state the nature and ownership of the land or claim thereto over which it is necessary to obtain a right-of-way in order to reach the surrounded claims, and the land description thereof by legal subdivisions if the land is surveyed, and give full details as to why present use of the right-of-way is denied or prevented and as to the steps which have been taken to acquire the right to use it. The petition should state whether any other right-of-way is available and if so, give reasons why it is not feasible or desirable to use that right-of-way.

(c) If the petition is based on other legal impediments, they must be set out and their effect described in detail.

§ 185.101 *Notice of action on petition to be recorded.* The claimant must file or record, in the office in which he filed or recorded his notice of petition,

[21] Where, in stock-raising homestead entries, it has been satisfactorily established that there are existent prior unpatented mining claims, the segregation of the latter is not strictly a segregation of mineral from non-mineral land, but rather the procedure adopted to define the boundaries of and provide a legal description for that part of the homestead entry which is not within the segregated mining claims.

a copy of the order or decision disposing of the petition.

§ 185.102 *Period for which deferment may be granted.* If the showing made is satisfactory, the authorized officer of the Bureau of Land Management will grant a deferment for an initial period not exceeding one year. The period shall begin on the date requested in the petition unless the approval sets a different date. Upon petition, the one year period may be renewed for another year if justifiable conditions exist. If the conditions justifying deferment are removed prior to the specified termination date of the deferment period, the deferment shall automatically be ended as of such earlier date.

§ 185.103 *When deferred assessment work is to be done.* All deferred assessment work may be begun at any time after the termination of the deferment but must be completed not later than the end of the assessment year commencing after the removal or cessation of the causes for the deferment or the expiration of any deferments granted under the act and shall be in addition to the annual assessment work required by law for such year.

[Circular 1747 February 14, 1950.]

185.104 - See Circ. 1828

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Reprint, February 1, 1951, of Circular No. 430, April 11, 1922, as amended and extended by Circular No. 943, June 18, 1934; Circular No. 1189, May 4, 1929; Circular No. 1275, June 22, 1932; Circular No. 1278, March 12, 1935; Circular No. 1298, May 4, 1933; Circular No. 1337, October 5, 1934; Circular No. 1347, November 13, 1937; Circular No. 1456, March 3, 1939; Circular No. 1502, January 20, 1942; Circular No. 1529, May 17, 1933; Circular No. 1612, February 5, 1946; Circular No. 1658, October 13, 1947; Circular No. 1681, July 27, 1948; Circular No. 1747, February 14, 1950, and, Circular No. 1767, September 22, 1950.

Interior--Duplicating Section, Washington, D. C. 90126

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular No. 1786]

PART 80—TOWN SITES

SALE TO ALASKA HOUSING AUTHORITY

The following new section is added to Part 80:

§ 80.14a *Sale to Alaska Housing Authority.* (a) Any lot or tract in the town which is subject to sale to the highest bidder by the trustee pursuant to § 80.14 may, upon request of the Alaska Housing Authority in connection with a specific housing project authorized by the act of April 23, 1949 (63 Stat. 57; 48 U. S. C. secs. 484, 484a–e), at any time prior to its disposition at public sale be sold by the trustee to the Alaska Housing Authority at fair value to be fixed by the trustee, provided such action in the opinion of the trustee will be of benefit to the occupants of the town site.

(Sec. 11, 26 Stat. 1099; 48 U. S. C. 355)

OSCAR L. CHAPMAN,
Secretary of the Interior.

FEBRUARY 14, 1951.

[F. R. Doc. 51-2477; Filed, Feb. 20, 1951; 8:45 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular No. 1787]

PART 72—PUBLIC USES

TRANSFER OF JURISDICTION OVER PUBLIC LANDS TO OFFICE OF TERRITORIES FOR USE UNDER THE ALASKA PUBLIC WORKS ACT

The title of Part 72 is amended to read as set forth above and the following new text is added to that part:

§ 72.15 *Effect of application for transfer.* An application for the transfer of jurisdiction over public land in Alaska made by the Office of Territories under section 7 of the Alaska Public Works Act (63 Stat. 629; 48 U. S. C. 486e) based on a project which has been approved under section 4 of the act (63 Stat. 627; 48 U. S. C. 486b) and filed with the manager of the land office in Alaska having jurisdiction over the land will have the effect of segregating the land from all forms of appropriation under the public-land laws, including the mining and the mineral leasing laws, subject to valid existing rights, pending the issuance by the Regional Administrator of an order of transfer or the rejection of the application.

(Sec. 1, 54 Stat. 1192; 48 U. S. C. 363. Interprets or applies R. S. 2478, sec. 7, 63 Stat. 629; 43 U. S. C. 1201, 48 U. S. C. Sup., 486e)

OSCAR L. CHAPMAN,
Secretary of the Interior.

FEBRUARY 16, 1951.

[F. R. Doc. 51-2577; Filed, Feb. 23, 1951; 8:45 a.m.]

Published in 16 F. R. 1792, of
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Interior—Duplicating Section, Washington, D. C. 91324

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[October 6a, 1961]

PART 72—PUBLIC LANDS

TRANSFER OF JURISDICTION OVER PUBLIC LANDS IN ALASKA TO OFFICE OF TRANSPORTATION FOR USE UNDER THE ALASKA PUBLIC WORKS ACT

The title of Part 72 is amended to read as set forth above and the following new text is added to that part:

§ 72.15 Effect of application for transfer. An application for the transfer of jurisdiction over public land in Alaska made by the Office of Transportation under section 7 of the Alaska Public Works Act (49 Stat. 839; 48 U. S. C. 486e) based on a project which has been approved under section 4 of the act (49 Stat. 837; 48 U. S. C. 486c) and filed with the manager of the land office in Alaska having jurisdiction over the land will have the effect of segregating the land from all forms of appropriation under the public-land laws, including the mining and the mineral leasing laws, subject to valid existing rights, pending the issuance by the Secretary, Administrator or an order of transfer or the rejection of the application.

(Sec. 1, 61 Stat. 1432; 48 U. S. C. Supp. V, 486e. Interpret or apply sec. 7, 49 Stat. 838; 48 U. S. C. 1601, 48 U. S. C. Supp. V, 486e.)

DOUGLAS L. CRAPMAN,
Secretary of the Interior.

FEBRUARY 13, 1961.

[F. R. Doc. 61-1277; Filed, Feb. 20, 1961; 8:45 a.m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1788]

PART 193—COAL LEASES, PERMITS, AND LICENSES

This part is hereby completely revised as follows, effective 60 days after date of issuance hereof by the Secretary of the Interior:

AUTHORITY: §§ 193.1 to 193.29 issued under sec. 32, 41 Stat. 450; 30 U. S. C. 189

CROSS REFERENCE: For coal permits and leases in Alaska see Part 70 of this chapter.

GENERAL

§ 193.1 *Statutory authority.* Sections 2 to 8, inclusive, of the act of February 25, 1920 (41 Stat. 438 et seq., 30 U. S. C. 201, 202–208), as amended, authorize the Secretary of the Interior to:

(a) Divide into leasing units and award leases of coal lands and coal deposits owned by the United States, outside of Alaska:

(b) Issue permits to prospect unclaimed and undeveloped areas of coal lands and coal deposits; and

(c) Issue limited licenses or permits to prospect for, mine and take for use coal from public lands.

§ 193.2 *Area and limitation on holdings.* A single lease or permit may embrace not exceeding 2,560 acres except where the rule of approximation applies. A permit will comprise contiguous tracts, or tracts in reasonably compact form, if good reasons appear for not including a contiguous area. A lease will comprise contiguous tracts, except in cases where it appears that noncontiguous tracts can be practically worked as a single mine or unit. No person, association or corporation, except as in the act provided, may hold at any one time more than 5,120 acres in any one State, whether directly through the ownership of coal leases and permits or interests in such leases and permits, or indirectly as a member of an association or associations, or as a stockholder of a corporation, or corporations, holding such leases and permits or interests therein or both.

§ 193.3 *Qualifications of applicants.* (a) Leases and prospecting permits may be issued to citizens of the United States, associations of citizens, and corporations organized under the laws of the United States or any State or Territory thereof, including a company or corporation operating a common-carrier railroad, and to municipalities. Limited licenses or permits for the mining of coal may be issued to citizens, associations of citizens and municipalities.

(b) Every applicant for coal permit or lease, other than a company or corporation operating a common-carrier railroad, must show that, with the area applied for, his or its interest or interests in such permits, leases and applications therefor, directly or indirectly, do not exceed in the aggregate 5,120 acres in any one State.

(c) Every company or corporation operating a common-carrier railroad must make a statement that it needs the coal for which it seeks a permit or lease for its own use for railroad purposes; that it operates main or branch lines in the State in which the lands involved are located; that the aggregate acreage in the permits, leases and applications therefor in which it is interested directly or indirectly does not exceed 10,240 acres; and that it does not hold more than one permit or lease for each 200 miles of its railroad lines served or to be served from such coal deposits exclusive of spurs or switches and exclusive of branch lines built to connect the leased coal with the railroad, and also exclusive of parts of the railroad operated mainly by power produced otherwise than by steam.

(d) Every applicant for lease or permit must also furnish a showing as to the need for additional coal production which cannot otherwise be reasonably met, or, if such a showing of need cannot be made, a statement of the reasons why a lease or permit is desired.

§ 193.4 *Equitable rights; holders of leases or permits affecting certain lands or coal deposits in Oklahoma.* (a) Equitable rights of persons who, prior to February 25, 1920, occupied and improved or claimed coal lands in good faith may be recognized in awarding leases of such lands. In the case of an award of a lease to such a person the rents and royalties will be established at rates not less than the minimum provided for leases under the act.

(b) A holder of a lease or permit, including a lease under temporary extensions, outstanding on May 24, 1949, covering certain coal lands or coal deposits in Oklahoma which the Choctaw

and Chickasaw Nations agreed to convey to the United States in a contract ratified by the act of June 24, 1948 (62 Stat. 536), who has maintained or acted diligently to maintain the lease or permit in good standing, may obtain a lease for the same lands or deposits without competitive bidding, provided that he files an application for a lease under this part prior to the expiration date of the current lease.

§ 193.5 *Permits, leases and licenses for lands disposed of with reservation of coal.* Where lands included in a permit, lease or license have been or may be disposed of with reservation of the coal deposits, a permittee, lessee or licensee must make full compliance with the law under which such reservation was made. See the acts of March 3, 1909 (35 Stat. 844; 30 U. S. C. 81); June 22, 1910 (36 Stat. 383; 30 U. S. C. 83–85); December 29, 1916 (39 Stat. 862; 43 U. S. C. 291–301); June 17, 1949 (63 Stat. 200); June 21, 1949 (63 Stat. 214; 30 U. S. C. Sup. III, 54), and other laws authorizing such reservations.

§ 193.6 *Requirements when lands are within a withdrawal.* Where any part of the lands embraced in an application for coal lease, permit or license is within a withdrawal which does not preclude disposition of the coal deposits, the head of the Government agency having control will be called upon for a report as to whether there is any objection to the granting of a coal lease, permit or license. In cases where such agency recommends that a special stipulation be furnished by the applicant to protect the interest of the United States, an appropriate stipulation will be included in the lease, permit or license.

COAL LEASES

§ 193.7 *Leasing units.* (a) No coal land or deposits may be leased until after division into suitable leasing units or tracts. Such leasing units may be established either upon application or when it is deemed advisable that additional coal units be established.

(b) All material factors, such as character and depth of the coal deposits, topography of the land, situation with respect to adjacent private holdings of coal lands, the proximity of rail or water transportation and outlet for other lands in the immediate vicinity, as well as the investment reasonably required to provide the requisite development and operating facilities, will be given consideration in the establishment of leasing units.

(c) Leasing units may include, in whole or in part, unsurveyed land, but a survey of the land will be made and the leasing unit conformed to such survey prior to the execution of a lease thereof.

§ 193.8 *Form of lease.* Leases shall be issued on Form 4–696.

§ 193.9 *Minimum expenditure and lease bond.* (a) An actual bona fide expenditure for mine operation, development, or improvement purposes, on or for the benefit of the leased land, of the amount that may be determined will be a condition in each lease as the minimum basis on which it will be granted, with the requirement that not less than one-third of such expenditure shall be made during the first year, and a like amount each year for the two succeeding years, the investment during any one year over such proportionate amount for that year to be credited on the expenditure required for the ensuing year or years.

(b) Prior to the issuance of a lease, the lessee shall furnish a bond executed by the lessee with approved corporate surety on Form 4–1113, or the lessee's personal bond on Form 4–1114, in such sum as may be required but in no event less than $1,000, and conditioned upon compliance with all of the terms and provisions of the lease. Personal bonds must be accompanied by a deposit of securities such as specified in § 193.22. If the amount of the bond is fixed at $1,000, the lessee may, instead, furnish a bond on Form 4–1113 with two qualified individual sureties, as provided in § 191.14 of this chapter. The right is reserved at any time before or after issuance of the lease to require an increase of the amount of the bond, whether a corporate, personal or individual surety bond, in any case where the Director, Bureau of Land Management, deems it proper to do so.

§ 193.10 *Minimum production.* Leases shall be conditioned upon the payment of a royalty on a minimum annual production beginning with the fourth year of the lease, except when operation is interrupted by strikes, the elements, or casualties not attributable to the lessee, unless, on application and showing made, operations shall be suspended when market conditions are such that the lease cannot be operated except at a loss or for the other reasons specified in section 39 of the act.[1] Operations under the lease shall be continuous except in the circumstances described or unless the lessee shall pay a royalty, less rent, on the minimum production for one year in advance, in which case operations may be suspended for that year.

§ 193.11 *Application for lease.* (a) An application for a lease must be filed in duplicate in the proper land office or, for lands or deposits in States in which there is no land office, in the Bureau of Land Management, Washington 25, D. C. No specific form is required, but the application should cover the following points:

(1) The applicant's name and address.

(2) A statement as to citizenship: In case of an individual, whether native born or naturalized and, if naturalized, date of naturalization, court in which naturalized, and number of certificate, if known; if a woman, whether she is married or single; if married, the facts as to the citizenship of her husband, and the date of her marriage if both are not native born citizens. Associations are required to file a certified copy of their articles of association and the same showing as to the citizenship and holdings of their members as required of an individual and specified herein. A corporation is required to file a certified copy of its articles of incorporation, and it must furnish a statement showing the percentage of each class of its stock, and the percentage of all of its stock which is owned or controlled by or on behalf of persons whom the corporation knows to be or who the corporation has reason to believe are aliens, or who have addresses outside of the United States, indicating which classes of stock have voting rights. If more than 10 per cent of the voting stock, or of all of the stock, is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each, and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person. If any appreciable percentage of the stock of the corporation is held by aliens of the excepted class, its application will be denied. If 20 per cent or more of the stock of any class is owned or controlled by or on behalf of any one stockholder, a separate showing of his citizenship and holdings must be furnished. A municipality must submit evidence of: (i) The law, charter and procedure taken by which it became and exists as a legal body corporate; (ii) that the taking of a permit or lease is authorized under such law or charter; and (iii) that the action proposed has been duly authorized by the governing body of such municipality.

(3) A statement of the interests, direct or indirect, in other coal leases, permits or applications therefor on public lands in the State in which the lease is desired, identifying same by land office and serial number, and that such interests, when added to the acreage covered by the application, do not exceed in the aggregate 5,120 acres in the State. A railroad company or corporation operating a common carrier must state that its interests, together with the acreage covered by the application, do not exceed in the aggregate 10,240 acres.

(4) Description of the lands for which a lease is desired by legal subdivisions or, if unsurveyed, by metes and bounds connected with a corner of the public surveys by course and distance and where possible, description of the lands by the approximate subdivisions of the future survey.

(5) The showing specified in §193.3 (d).

(6) A statement of the general situation of the land with respect to other mines, its topography, outlet to market, and transportation facilities and the character and extent of the coal deposits so far as known.

(7) The contemplated investment for the development and equipment of a producing mine of a stated average daily output.

(b) The application must be signed by the applicant or his attorney-in-fact, and if executed by an attorney-in-fact must be accompanied by the power of

[1] See showing required under § 191.26 of this chapter.

attorney and the applicant's own statement[2] as to citizenship and acreage holdings. Applications on behalf of a corporation must be accompanied by proof of the signing officer's authority to execute the instrument and must have the corporate seal affixed thereto.

§ 193.12 *Offer of lands or deposits for lease by competitive bidding.* If the lands or deposits are found to constitute an acceptable leasing unit and subject to coal lease, they will be offered for such lease on the terms and conditions to be specified in the notice of sale to the qualified person who offers the highest bonus by competitive bidding as provided in the notice of sale. If it be found that the area covered by an application does not constitute an acceptable leasing unit, the area may be adjusted, by appropriate additions and eliminations, to constitute an acceptable leasing unit which may be offered for lease.

§ 193.13 *Notice of lease offer.* Notice under the preceding section of the offer of the lands or deposits for lease will be given by publication once a week for four consecutive weeks, or for such other period as may be deemed advisable, in a newspaper of general circulation in the county in which the lands or deposits are situated. The notice will be published at the expense of the Government. A copy of the notice will be posted in the proper land office during the period of publication. Such notice will show the day, hour, and place of sale, whether the sale will be at public auction or by sealed bids, the method of submitting sealed bids, the rental and rate of royalty to be charged, the minimum investment and the minimum production requirement, and the description of the land. If the sale is by public auction, the offer will be made at the land office for the district in which the lands are situated, or at such other place as may be fixed in the notice. In such case the notice will also specify that sealed bids may be submitted which will be opened and read at the time and place specified for the auction. The right is reserved by the Director, Bureau of Land Management, in the public interest, to reject any and all bids, and should a bid be rejected, the deposit made by the bidder will be returned. All bidders at any public sale of leases are warned against committing any act of intimidation, combination or unfair management to hinder or prevent bidding thereon, in violation of 18 U. S. C. 1860.

§ 193.14 *Sale; bidding requirements; action by successful bidder.* Before bidding is commenced by those persons present, the manager or other officer conducting the sale will open and read to those persons the sealed bids received on or before the time set in the notice of sale. The successful bidder must on the day of sale deposit with the manager of the land office or other officer conducting the sale and each sealed bid must be accompanied by the following: Certified check, money order, or cash, for one-fifth of the amount bid and evidence of qualifications of the bidder as prescribed in § 193.11 (a) (2) and (3) and (b), if a current showing in that regard has not been filed in connection with the application for lease of the lands or deposits. If the land is surveyed, the successful bidder will be allowed 30 days from receipt of lease forms within which (a) to file in the proper land office a lease, duly executed by him in quintuplicate, on form 4–696, and the bond required by § 193.9, and (b) to pay the remainder of the bonus bid by him and the annual rental for the first year of the lease. The lease will be dated as of the first day of the month following its issuance unless the successful bidder requests that it be dated as of the first day of the month of issuance. If the land is unsurveyed, the successful bidder will not be required to comply with requirements of paragraphs (a) and (b) in this section until the land has been surveyed and the plat of such survey accepted and officially filed. Such survey will be at the expense of the Government. If the bidder fails to comply after due service of notice, that portion of his deposit representing the minimum required to be deposited with the bid shall be held as liquidated damages and disposed of as other receipts under the Mineral Leasing Act.

§ 193.15 *Modifications and leasing of additional land or coal deposits.* (a) Under section 3 of the act (30 U. S. C. 203), a lessee may obtain a modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the Director determines that it will be to the advantage of the lessee and the United States, but in no event shall the area embraced in such modified lease exceed in the aggregate 2560 acres, except where the rule of approximation applies. The lessee shall file his application for modification in duplicate in the proper land office describing the additional lands desired, the needs and reasons for and the advantage to the lessee of such modification. No filing fee is required. Upon determination by the Director that the modification is justified and the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe. If, however, it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they may be offered as provided in § 193.13.

(b) Under section 4 of the act (30 U. S. C. 204), upon satisfactory showing by the lessee that all of the workable deposits of coal within a tract covered by the lease will be exhausted, worked out or removed within three years thereafter, an additional tract of land or coal deposit may be leased. Application shall be filed in duplicate in the proper land office and shall contain a description of the lands requested, estimated recoverable reserves, future plan of operation for such reserves and for any lands requested and the proposed method of entry into such lands. If the lands or coal deposits or any part thereof are found to constitute an acceptable leasing unit they will be offered for leasing as provided in § 193.13. If the applicant be the successful bidder and the additional lands can be practicably operated with the applicant's leasehold as a single mine or unit, the additional lands may be included in a modified lease which must not exceed 2560 acres; otherwise, a separate lease may be issued.

(c) Before a lease is modified under paragraph (a) or (b) of this section, the lessee shall file the consent of surety and the acceptance by the lessee of the applicable regulations.

§ 193.16 *Readjustment of terms and conditions at end of twenty-year periods.* The terms and conditions of a lease are subject to readjustment at the end of each twenty-year period succeeding the date of the lease unless otherwise provided by law at the time of the expiration of such periods. The lessee will be notified of the proposed readjustment of terms or notified that no readjustment is to be made. Unless the lessee files objection to the proposed terms or a relinquishment of the lease within 30 days after receipt of the notice, he will be deemed to have agreed to such terms. Notice of the proposed readjustments will be given, whenever feasible, before the expiration of each such twenty-year period.

§ 193.17 *Relinquishment of lease.* Upon payment of all rentals, royalties and other debts due and payable to the lessor and upon payment of all wages or money due and payable to the workmen employed by the lessee, and upon a satisfactory showing that the public interest will not be impaired, the lessee may surrender the entire lease. The lessee may also surrender any legal subdivision of the area included within the lease, but in no case shall such lease be so terminated in whole or in part until and unless the lessee shall have made provision for the preservation of any mines or productive works or permanent improvements on the lands covered thereby in accordance with the regulations and terms of the lease. A surrender must be by a relinquishment filed in triplicate in the proper land office. A relinquishment upon its acceptance shall take effect as of the date it is filed.

§ 193.18 *Cancellation of lease.* If the lessee shall fail to comply with the provisions of the act, or of the general regulations promulgated and in force at the date of the lease, or at the effective date of any readjustment of the terms and conditions thereof under § 193.16, or make default in the performance or observance of any of the terms, covenants, and stipulations of the lease and such failure or default shall continue for 30 days after service of written notice thereof by the lessor, than the lessor may institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of the lease as provided in section 31 of the act. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of the lease for any other cause of forfeiture, or for the same cause occurring at any other time.

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[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and wilfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement as to any matter within its jurisdiction.

COAL PROSPECTING PERMITS

§ 193.19 *Character of lands.* Permits shall be issued on Form 4–694 for a period of two years to qualified applicants to prospect unclaimed, undeveloped lands where prospecting or exploratory work is necessary to determine the existence or workability of the coal deposits.

§ 193.20 *Rights conferred.* A permit will entitle the permittee to the exclusive right to prospect for coal on the land described therein. In the exercise of this right, the permittee shall be authorized to remove from the premises only such coal as may be necessary in order to determine the workability and commercial value of the coal deposits in the land.

§ 193.21 *Application for permit.* An application for a permit must be filed in duplicate in the manner and in the office specified in § 193.11. Each application must be accompanied by a filing fee of $10.00 which will be retained as a service charge even though the application should be rejected or withdrawn either in whole or in part. No specific form of application is required, but in addition to the requirements of § 193.11 (a) (1), (2), (3), (4) and (5) and (b), it should cover the following points:

(a) Condition of coal occurrences, so far as determined; description of workings, and outcrops of coal beds, if any, and reason why the land is believed to offer a favorable field for prospecting for coal.

(b) Detailed plan and method of conducting prospecting or exploratory operations on the land, estimated cost of carrying out such proposed prospecting operations, and the diligence with which such operations will be prosecuted.

(c) Brief statement of applicant's experience in coal-mining operations, if any, together with one or more references as to his reputation and business standing.

§ 193.22 *Permit bond.* The applicant must furnish a corporate surety bond on Form 4–1130 or his personal bond on Form 4–1131 conditioned upon compliance with all the terms of the prospecting permit. The bond shall be in the sum of $500 except where the lands applied for have been entered or patented with the coal reserved to the United States pursuant to the act of June 22, 1910 (36 Stat. 583, 30 U. S. C. 83–85), in which event, a bond on the same form in the sum of $1,000 will be required. Personal bonds must be accompanied by a deposit of negotiable Federal securities equal at their par value to the amount of the bond. The bond may be filed with the application which will expedite action thereon, or within 30 days after receipt of notice by the applicant that the permit will be granted when the bond is filed. The permittee may, in place of a bond of the two types specified above, submit one on Form 4–1130 with two qualified sureties as provided in § 191.14 of this chapter.

§ 193.23 *Extension of permits.* (a) Coal permits may be extended for a period of two years if the permittee has been unable with the exercise of reasonable diligence to determine the existence or workability of the coal deposits, or for others reasons which may warrant an extension. An application for extension must be filed in duplicate only within the period beginning 90 days prior to the date to which the permit is limited. The application must be filed in the office specified in § 193.11 and must show what efforts, if any, the permittee has made to comply with the terms of his permit and the reasons for failure fully to comply therewith, such showing to be corroborated, if possible, by a statement of at least one disinterested person having actual knowledge of the facts. The application must also show how much additional time is considered necessary to complete prospecting work. Extension will be limited to such period, not exceeding the two years authorized, as may be determined to be allowable under the circumstances in each particular case. Upon failure of permittee to file such an application within the specified period, the permit will expire without notice to the permittee and upon notation of such expiration in the land office tract books, the lands will become subject to new applications for coal permits or leases.

(b) Until the cancellation or termination of a coal permit is noted on the records of the land office or on the records of the Bureau of Land Management if the lands involved are in a State in which there is no land office, no other person will be permitted to gain any right to the same class of deposits by the filing of an application therefor, and such application shall be rejected.

§ 193.24 *Reward for discovery.* A permittee who shows, that prior to the expiration of his permit, the land included in the permit contains coal in commercial quantities, is entitled to a preference right lease for all or part of the land, the area to be taken in a reasonably compact form. An application for preference right lease must be filed in duplicate in the office specified in § 193.11 promptly after commencement of commercial operations, but in no event later than the expiration of the period to which the permit is limited. The application must describe the land desired, set forth fully and in detail the extent and mode of occurrence of the coal deposits as disclosed by the prospecting work performed under the permit, show that coal was discovered in commercial quantities before the date of the expiration of the permit and show any change in the information contained in the application for permit. The application must be accompanied by the rental for the first year of the lease, which shall be 25 cents for each acre or fraction thereof. The lease, if issued, will be in accordance with the provisions of §§ 193.8 to 193.10, inclusive, and will be dated the first day of the month following the date the application is filed unless the applicant requests that it be dated the first day of the month within which it is filed. If the permit expires and the application for lease is finally rejected royalty for coal mined to the date of receipt of notice by the permittee of such rejection will be charged in accordance with the royalty terms of the permit and such mining of the coal will not constitute a trespass.

TRANSFERS OF PERMITS AND LEASES: OVERRIDING ROYALTIES

§ 193.25 *Transfers, including subleases.* (a) Permits and leases may be transferred, in whole or in part to any person, association, or corporation qualified to hold such leases and permits. The approval of a transfer of only part of the lands described in a permit or lease will create a new permit or lease which will be given a current serial number, but a discovery on lands under one permit will not inure to the benefit of the other. The approval of such a transfer will not extend the life of the permit or the readjustment periods of the lease. Transfers of permits and leases, whether by direct assignments, working agreements, transfer of royalty interests, subleases or otherwise, must be filed for approval at the office specified in § 193.11 within 90 days from final execution and must contain evidence of the qualifications of the assignee or transferee, consisting of the same showing required of a lease or permit applicant by § 193.11 (a) (2) and (3) and (b). If the instrument fails to describe the true consideration, a statement must be submitted showing the consideration in full. The statement will be treated as confidential and not for public inspection. If a bond is necessary it must be furnished. Transfers of record title interest must be filed in triplicate. A single executed copy of all other instruments of transfer is sufficient. A transfer will take effect the first day of the month following its final approval by the Director, Bureau of Land Management, or if the transferee requests, the first day of the month of the approval.

(b) The transferor of a permit or lease, including a sublease, and his surety will continue to be responsible for the performance of any obligation under the permit or lease until the effective date of the approval of the transfer. If the transfer is not approved, their obligation to the United States shall continue as though no such transfer had been filed for approval. After the effective date of approval the transferee, including sublessee, and his surety will be responsible for the performance of all permit or lease obligations notwithstanding any terms in the transfer to the contrary. The account under the permit or lease must be in good standing before approval of a transfer will be given.

§ 193.26 *Limitation on overriding royalties.* An overriding royalty interest shall not be created by assignment or otherwise exceeding 50 percent of the rate of royalty first payable to the United States under the lease or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, permit, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above

limitation if he shows to the satisfaction of the Director, Bureau of Land Management, that he has made substantial investments for improvements on the land covered by the assignment.

LIMITED COAL LICENSES

§ 193.27 *Purpose of license.* Coal licenses may be issued for a period of two years to individuals and associations of individuals to mine and take coal for their own local domestic need for fuel, but in no case for barter or sale, without the payment of any rent or royalty. Licenses may be issued to municipalities to mine and dispose of coal without profit to their residents for household use. Under such a license a municipality may not mine coal either for its own use or for nonhousehold use such as for factories, stores, other business establishments and heating and lighting plants.

§ 193.28 *Area and duration.* (a) A license to an individual or association, in the absence of unusual conditions or necessity, will be limited as to area to a legal subdivision of 40 acres or less and may be revoked at any time. Such license will expire by limitation at the end of 2 years from date of issuance, unless timely renewed on application filed and proper showing made prior to expiration of the 2-year period.

(b) Licenses to municipalities are limited as to area by the act, as follows: Not to exceed 320 acres for a municipality of less than 100,000 population, not to exceed 1,280 acres for a municipality of not less than 100,000, and not more than 150,000 population, and not to exceed 2,560 acres for a municipality of 150,000 population or more. Licenses to municipalities will expire by limitation at the end of 4 years from date of issuance, unless renewed; but every such licensee must make to the Director, Bureau of Land Management, an annual report of all operations conducted under such license.

§ 193.29 *Application for license.* Application for a limited license to mine coal for domestic needs must be filed, in quadruplicate, on Form 4-694a, or its substantial equivalent in the office specified in § 193.11 and be accompanied by a $10 filing fee. A municipality must file with the application a showing of (a) the law or charter and procedure taken by which it became and exists a legal body corporate, (b) that the taking of a license is authorized under such law or charter and (c) that the proposed action has been duly authorized by the governing body of the municipality.

§ 193.30 *Licenses to relief agencies.* (a) The Director, Bureau of Land Management, may grant authority to a recognized established relief agency of any State, upon its request, to take government-owned coal deposits within the State in localities where needed to supply families on the rolls of such agency who require coal for fuel for their homes and who are unable to pay for same.

(b) Tracts shall be selected at points convenient to supply the families in the locality thereof, and each family shall be restricted to the amount of coal actually needed for its use, which in no case shall exceed 20 tons annually.

(c) Coal may be taken from such tracts only by those given written authority by the relief agency, and all mining shall be done pursuant to permission and all Federal and State laws and regulations for the safety of miners, prevention of fires and of waste, etc., shall be observed. The relief agency shall see that the premises are left in a safe condition for future mining operations.

(d) The local relief agency may take coal from available land prior to issuance of license but not earlier than 5 days after it has filed in the land office of the district wherein the land is situated an application for license. No filing fee will be required. In the absence of objections and if the application is otherwise regular, a license will be granted. Pending action on the application for license, the relief agency may continue to take the coal.

NOTE: The reporting requirement of this regulation has been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

[SEAL] OSCAR L. CHAPMAN,
Secretary of the Interior.

MARCH 27, 1951.

[F. R. Doc. 51-3927; Filed, Apr. 2, 1951; 8:46 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Circular 1790

Part 103—Entries Subject to Section 24 of Federal Power Act

APPLICATIONS AND ENTRIES CONFLICTING WITH LANDS RESERVED OR CLASSIFIED AS POWER SITES, OR COVERED BY POWER APPLICATIONS

AUTHORITY: §§ 103.1 to 103.8 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 103.1 to 103.8 contained in Circular 729, Nov. 20, 1920, except as noted following sections affected. For editorial changes not otherwise indicated, see item 3 of Note following table of contents of chapter.

CROSS REFERENCES: For applications and entries, Alaska, see Part 60 of this chapter. For rights of way for power projects and for power transmission lines, see Part 245 of this chapter. For Federal Power Commission, see Conservation of Power, 18 CFR Chapter I. For rights of way over Indian lands; power projects; see Indians, 25 CFR 256.42–256.44.

APPLICATIONS AND ENTRIES CONFLICTING WITH LANDS RESERVED OR CLASSIFIED AS POWER SITES, OR COVERED BY POWER APPLICATIONS

§ 103.1 *Statutory authority.* Section 24 of the Federal Power Act of June 10, 1920 (41 Stat. 1075, as amended, 49 Stat. 846; 16 U. S. C. 818), provides that any lands of the United States included in an application for power development, under said act, shall be reserved from entry, location, or other disposal under the laws of the United States, until otherwise directed by the Federal Power Commission or by Congress. It also provides that whenever the said Commission shall determine that the value of any lands withdrawn or classified for power purposes will not be injured or destroyed for such purposes by location, entry or selection under the public land laws, the Secretary of the Interior shall declare such lands open to location, entry or selection, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy and use any or all of such lands for power purposes.

§ 103.2 *Action on application, in case of total conflict.*[1] The manager will at once reject, subject to appeal, any application filed which is wholly in conflict with lands reserved or classified as power sites, or covered by a power application under this act, except:

(a) (1) A homestead application predicated upon settlement prior to the reservation, classification, or filing of the power application, and accompanied by corroborated statement of such prior settlement.

(2) An application of this character should be received, noted in pencil on the district land office records, and transmitted to the regional administrator for consideration, without allowance.

(b) Any application which, were it not for the reservation, classification, or power application, would be allowable, wherein claim is made by way of corroborated statement, that applicant has acquired equitable rights antedating the withdrawal. Such applications should be received for transmission to the proper officer for consideration, but should not be allowed by the manager.

§ 103.3 *Action on application, in case of partial conflict.* Where any such application is only partially in conflict with lands reserved or classified as power sites, the manager will allow it only as to the subdivisions not in conflict.

§ 103.4 *Action on application conflicting with transmission line withdrawal.* Where any application is presented which conflicts with a transmission line withdrawal of a strip of land crossing the land applied for, the manager will, if otherwise regular, allow the entry, but will note upon the face of the entry papers, and upon his records, the following:

Made in accordance with and subject to the provisions and reservations of sec. 24 of the Federal Power Act, June 10, 1920 (41 Stat. 1063), as amended August 26, 1935 (49 Stat. 846), as to that portion of the _____ _____ lying within _____ feet of the center line of the transmission line right of way of the _____.

§ 103.5 *Application for restoration of withdrawn lands.* Whenever the manager finds it necessary to reject an application, in carrying out these instructions, such officer should inform the applicant that he is at liberty to file an application for the restoration of such withdrawn lands, under the provisions of section 24 of the Federal Power Act, but that favorable action upon such application will not give the applicant any preference right, or right to preferential treatment if or when the lands are finally restored.

§ 103.6 *Rights to withdrawn lands which may be recognized.* (a) Withdrawn public lands are not subject to lease, or other disposition, other than such as is specifically recognized by the Federal Power Act and there is no way to acquire preference rights, preferential treatment, or equitable or legal preference, excepting where legal or equitable rights were acquired before the withdrawal of the land, and that, in all cases where such rights are claimed, careful investigation as to its bona fides will be made before it is recognized.

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

REPRINT July 3, 1951, of Circular 729, November 20, 1920, as amended by regulations of April 29, 1922, and Circular 1044, December 14, 1925.

(b) While the act of June 25, 1910 (36 Stat. 847; 43 U. S. C. 141–143), allows metalliferous mineral explorations and applications based thereon, the act of June 10, 1920 makes no exceptions.

(c) Any mineral application or location, based upon discoveries made subsequent to June 10, 1920, which is in conflict with lands reserved or classified as power sites, will be rejected by the manager, subject to appeal.

(d) If the application alleges a valid location made prior to the date of the act of June 10, 1920, and is accompanied by a corroborated statement attesting the fact, the patent proceedings may be prosecuted to completion. The proof should be considered upon its merits, and, if found regular, final certificate may issue although a protest may have been filed by the regional administrator; but the claimant should be advised in such cases that patent will be withheld by the Bureau of Land Management pending a report by the regional administrator upon the bona fides of the claim; also, that when the case is adjudicated in the Bureau of Land Management determination will be made whether or not the claim is subject to the provisions of section 24 of the act.

(e) Applications for lease under the Oil Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181 et seq.), embracing lands applied for under the Federal Power Act, or reserved or classified as power sites, should be received and transmitted to the Bureau of Land Management. If, upon reference of such an application to the Commission, it shall determine that a lease may be granted without injury to or destruction of the value of the lands for the purpose of power development, the application will be considered and acted upon in the usual way.

[Circ. 729, Nov. 20, 1920, as amended by Circ. 1044, Dec. 14, 1925]

§ 103.7 *Lands occupying status of withdrawn lands.* Lands within final hydroelectric power permits under the act of February 15, 1901 (31 Stat. 790; 43 U. S. C. 959), or transmission-line permits or approved rights-of-way, whether under said act of February 15, 1901, or the act of March 4, 1911 (36 Stat. 1253; 16 U. S. C. 5, 420, 523, 43 U. S. C. 961) are deemed "classified as valuable for power purposes," and, whether withdrawn as power-site reserves or not, occupy the status of withdrawn lands.

GENERAL DETERMINATION UNDER SECTION 24 OF FEDERAL POWER ACT AS TO LANDS APPLIED FOR, OCCUPIED, AND USED FOR TRANSMISSION-LINE PURPOSES

§ 103.8 *General determination; exception.* (a) The executive secretary of the Federal Power Commission having called to the attention of the Commission the desirability of making a general determination under the provisions of section 24 of the Federal Water Power Act [2] with respect to lands of the United States theretofore or thereafter reserved or classified as power sites which are applied for, or occupied and used for, transmission-line purposes only, the Commission at its meeting of April 17, 1922, voted as follows:

(1) That where lands of the United States have heretofore been, or hereafter may be, reserved or classified as power sites, such reservation or classification being made solely because such lands are either occupied by power transmission lines or their occupancy and use for such purposes has been applied for or authorized under appropriate laws of the United States, and such lands have otherwise no value for power purposes, and are not occupied in trespass, the commission determines that the value of such lands so reserved or classified or so applied for or authorized, will not be injured or destroyed for the purposes of power development by location, entry or selection under the public land laws, subject to the reservation of section 24 of the Federal Water Power Act.

[2] The act of Aug. 26, 1935 (49 Stat. 838; 16 U. S. C. 796 et seq.) amended the Federal Water Power Act of June 10, 1920 (41 Stat. 1063; 16 U. S. C. 791–823) and changed its short title to the "Federal Power Act."

(2) That when notice is given to the Secretary of the Interior of reservations made under the provisions of section 24 of the Federal Water Power Act, such notice shall indicate what lands so reserved, if any, may, in accordance with the determination of the preceding paragraph, be declared open to location, entry, or selection subject to the reservation of said section 24.

(b) Where the Bureau of Land Management finds that lands applied for are occupied in trespass, the application will be referred to the Federal Power Commission for such action as it deems to be appropriate to the particular circumstances existing in the case.

[Reg. Apr. 29, 1922]

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See 1737

Replaced # 1666, 1693 and 1791

Replaced by 1895 (1/58)

Original copy

Obsolete See 1860 See 1895

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Circular No. 1792

Part 250—Public Sales

AUTHORITY: §§ 250.1 to 250.13 issued under R. S. 2478; 43 U. S. C. 1201.

SOURCE: §§ 250.1 to 250.13 contained in Circular 1666, 12 F. R. 7944, except as noted following sections affected.

§ 250.1 *Statutory authority.*[1] The sale at public auction of isolated or disconnected tracts of public land not exceeding 1,520 acres, and tracts not isolated, of not exceeding 760 acres, the greater parts of which are mountainous or too rough for cultivation, is authorized by section 2455 of the Revised Statutes, as amended by section 14 of the act of June 28, 1934 (48 Stat. 1274; 43 U. S. C. 1171) and the act of July 30, 1947 (61 Stat. 630).

§ 250.2 *Definitions.* When used in this part:

(a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "Regional administrator" means the regional administrator for the region in which the land is situated. Where there is no district land office in the State in which the land is situated, however, it means the "Director."

(d) "Manager" means manager of the land office for the district in which the land is situated. Where there is no district land office in a State, it means the Director.

(e) "Applicant" or "purchaser" includes an individual, a partnership, an association, or a corporation.

[Circ. 1666, 12 F. R. 7944, as amended by Circ. 1693, 13 F. R. 5182]

§ 250.3 *Application.* (a) An application to have tracts ordered into the market must be executed in duplicate on Form 4–008e. The application must be filed with the manager of the land office for the district within which the land is situated. If the land is in a State in which there is no district land office, the application must be filed with the Director.

(b) The application need not be under oath but must be signed by the applicant and two corroborating witnesses having personal knowledge of the facts stated therein.[2]

§ 250.4 *Action upon the application or in the absence of application.* (a) If an application is not properly executed or not corroborated, if the applicant does not show himself qualified, or if the tract appears not to be subject to disposition, the application will be rejected. If part of the tract is appropriated, the application will be rejected as to that part, and, in the absence of an appeal, the description thereof eliminated from the application, and such further action will be taken as though it had never been included therein.

(b) The regional administrator may classify under section 7 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272; 43 U. S. C. 315f) as amended, land for offering under this part, and he may authorize such offering of the land for sale if he determines, in accordance with the existing regulations and procedures, that such land is suitable for disposal as an isolated or as a rough or mountainous tract, as the case may be.

(c) The regional administrator may authorize the offering of an isolated tract for sale either upon application or on his own motion.

[Circ. 1666, 12 F. R. 7944, as amended by Circ. 1693, 13 F. R.5182]

§ 250.5 *Effect of application.* The filing of an application in conformity with the regulations in this part will not segregate the lands applied for from other application under the public land laws, or defeat a prior valid right initiated under any such law. However, until the issuance of a cash certificate, the regional administrator may at any time determine that the lands should not be sold, the applicant or any bidder has no contractual or other rights as against the United States, and no action taken will create any contractual or other obligation of the United States.

[Circ. 1666, 12 F. R. 7944, as amended by Circ. 1693, 13 F. R. 5182]

§ 250.6 *Land subject to sale as isolated tracts.* (a) There is no limitation as to the number of isolated-tract applications which may be filed, nor as to the amount of such land which may be applied for or purchased by any one person or group. An application may include several incontiguous tracts, but it may not embrace an aggregate area in excess of 1,520 acres, and tracts with an area over 1,520 acres will not be ordered into the market. Each isolated tract will be offered separately and a separate cash certificate will be issued for each tract, except to the extent that they are bought by the same person.

(b) As a general rule, no tract will be deemed isolated unless it is completely surrounded by lands held in non-Federal ownership, or is so effectively separated from other federally owned lands by some permanent withdrawal or reservation as to make its use with such lands impracticable. A tract is considered isolated if the contiguous tracts are all patented, even though there are other public lands cornering upon the tract.

§ 250.7 *Land subject to sale as mountainous or too rough for cultivation; qualifications of applicant.* (a) Legal subdivisions not exceeding 760 acres, the greater part of which is mountainous or too rough for cultivation, may be offered for sale only upon the application of any person who owns land or holds a valid entry on lands adjoining such tract and regardless of the fact that such tract may not be actually isolated.

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[1] The provisions of R. S. 2455 (43 U. S. C. 1171) authorizing public sales, were extended, with certain conditions, to the areas mentioned below by the statutes indicated:

Area	*Statute*
Chippewa Indian lands, Minn.	Feb. 4, 1919 (40 Stat. 1055; 43 U. S. C. 1172).
Oregon and California railroad grant lands, Oreg., Class 3	May 25, 1920 (41 Stat. 622; 43 U. S. C. 1174)
Oregon and California railroad grant and Coos Bay wagon-road grant lands, Oreg.	Section 3, August 28, 1937 (50 Stat. 875).
Oklahoma	April 24, 1928 (45 Stat. 457; 43 U. S. C. 1171a).
Alabama coal lands	May 23, 1930 (46 Stat. 377; 43 U. S. C. 1171b).

[2] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statments or representations as to any matter within its jurisdiction.

Reprint, May 1951, of Circular No. 1666 of November 19, 1947, as amended by Circular No. 1693 of August 27, 1948, and Circular No. 1791 of May 4, 1951.

(b) An applicant for sale of a tract which is mountainous or too rough for cultivation must show that he is the owner of the whole title, that is, the fee owner, of land adjoining the land applied for, or that he holds a valid entry embracing adjoining land, in connection with which entry he has met the requirements of the law. A showing that the applicant owns cornering land or holds a valid entry of a cornering tract would not qualify him.

(c) An application under this section may not embrace more than 760 acres. An applicant may file any number of applications provided the land applied for together with such land previously purchased does not exceed 760 acres in area. The limitation under this section relates only to applications under this section. In acting on applications for rough or mountainous tracts, regard will be had to the character of each subdivision applied for. An entire tract composed of more than one legal subdivision will not be offered upon the ground that the greater part of the tract is mountainous or too rough for cultivation, if taken as a whole.

§ 250.8 *Mineral lands.* (a) Mineral lands may not be sold except under specific statutory authority which exists for the sale of lands valuable for certain minerals with a reservation of those minerals to the United States. The regulations relating to applications for the surface of such lands are contained in Part 102 of this chapter. They must be complied with whenever an application is filed for land, withdrawn, classified, or valuable for such minerals, where such land is embraced by mineral permits or leases, or applications for such permits or leases, or where the land lies within the geological structure of a producing oil or gas field.

(b) The notice of sale for publication and posting will provide that the land will be sold subject to reservations to the United States of the appropriate minerals, and in accordance with the provisions of the applicable act or acts which authorize the making of the reservation. The cash certificate and patent will provide for such reservation and will refer to such act or acts.

§ 250.9 *Publication of notice; time and proof of publication; posting required.* (a) Upon the issuance of a decision authorizing the sale, a notice for publication will be sent the applicant with instructions that he publish it at his expense in the newspaper designated. Payment for publication must be made by the applicant directly to the publisher. The notice must be published prior to the date of sale in the designated newspaper, if a daily paper, in the Wednesday issue for five consecutive weeks; if a weekly, in five consecutive issues; and if a semi-weekly or tri-weekly, in the issue of the same day of each week, for five consecutive weeks. The manager will cause a similar notice to be posted in his office during the entire period of publication.

(b) The applicant must file in the district land office, prior to the date fixed for the sale, evidence that publication has been had for the required period. Such evidence may consist of the statement of the publisher, accompanied by a copy of the notice published.

§ 250.10 *The bidding.* (a) The land will be offered for sale at public auction, at not less than its appraised value, at the time and place fixed in the public notice.

(b) Bids may be made by the principal or his agent, either personally at the sale or by mail.

(c) Bids sent by mail will be considered only if received at the district land office prior to the hour fixed for the sale. These bids must be enclosed in sealed envelopes and must be accompanied by certified checks or post office money orders for the amounts of the bids. The envelopes must be marked in the lower left-hand corner as prescribed in the notice of sale. The envelopes containing the sealed bids will not be opened by the manager until the time fixed for the sale. However, he will note on each envelope the hour and date of its receipt.

(d) The manager will commence the sale by reading the public announcement thereof and by opening the sealed bids and announcing such bids. He will then receive bids from the persons present.

(e) All bidders are warned against violation of the provisions of 18 U. S. C. 1860, prohibiting unlawful combination or intimidation of bidders.

§ 250.11 *Action at close of bidding*—(a) *Declaration of highest bidder.* When all persons present shall have ceased bidding, the manager will, in the usual manner, declare the bidding closed, subject to the preference right of purchase of owners of contiguous land (see paragraph (b) of this section), announce the amount of the highest bid and declare the offerer thereof (or his principal) the highest bidder, provided that the latter immediately pays to the manager the amount of the bid, if he has not already done so. In the absence of such payment, the manager will at once proceed with the sale, excluding the bid made by the highest bidder and starting with the next highest bid not withdrawn. In the event the bids of two or more persons sent by mail are the same in amount and are the highest offered, the first received, as shown by the hour and date noted on the envelope, will be accepted by the manager. In no event may the land be sold or a purchaser declared before the end of the 30-day period for the assertion by contiguous land owners of their preference right of purchase.

(b) *Preference right of purchase; declaration of purchaser.* The owners of contiguous lands have a preference right, for a period of 30 days after the highest bid has been received, to purchase the land offered for sale at the highest bid price or at three times the appraised price if three times such appraised price is less than the highest bid price. Such preference right may also be asserted at any time prior to the commencement of such period. Such preference right is not extended to the owner or owners of cornering lands.

(1) A preference right to purchase must be supported by proof of the claimant's ownership of the whole title to the contiguous lands (that is, he must show that he had the whole title in fee), and must be accompanied by the purchase price of the land.[3]

(2) If there is only one qualified preference-right claimant, or if there are conflicting qualified preference-right claimants and there is an amicable agreement among them, the manager will declare such claimant or claimants the purchasers.

(3) Where there is a conflict between two or more persons claiming a preference right of purchase, they will be allowed 30 days from receipt of notice within which to agree among themselves upon a division of the tracts in conflict by subdivisions. In the absence of an agreement, the regional administrator will make a determination equitably apportioning the various subdivisions among the claimants, ordinarily so as to equalize as nearly as possible the tracts they should be permitted to purchase. Where only one subdivision is offered for sale and it adjoins the lands of two or more preference-right claimants, it will generally be awarded to the applicant for the sale if he is a qualified preference-right claimant; if he is not, it will be awarded to the first qualified person who properly asserts such a preference right within or prior to the 30-day preference-right period. The manager will make the award by declaring the appropriate claimant or claimants purchasers of the land.

(4) If, by the end of the preference-right period, no preference right has been asserted, the sale will be declared closed and the manager may declare the highest bidder the purchaser.

[Circ. 1666, 12 F. R. 7944, as amended by Circ. 1693, 13 F. R. 5182]

§ 250.12 *Action after purchaser is declared*—(a) *Payment of cost of publication by purchaser.* If the applicant for the sale is an unsuccessful bidder, the person awarded the land must reimburse and pay directly to him the amount expended for publication of notice and file evidence thereof in the district land office within 10 days from the date he is declared the purchaser. If the evidence is not furnished, the manager will reject the bid and will accept the bid next in order, subject to the same conditions. Where an equitable apportionment of the land is made between two or more claimants, pursuant to paragraph (b) of § 250.11, each of the claimants must bear an equal share of the expense.

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[3] Although one who holds a valid adjoining entry may file an application for the sale of lands which are mountainous or too rough for cultivation, he may not assert a preference right of purchase unless he has acquired the whole title to adjoining lands.

(b) (1) Unless he has previously done so, the purchaser must, within 10 days after he has been so declared, file with the manager a statement of his citizenship, or if a partnership, a statement of the citizenship of its members. If the purchaser is an unincorporated association, a statement must be filed showing the citizenship of each member. A corporation is required to file a certified copy of its articles of incorporation showing that it is organized under the laws of the United States, or of some State, Territory or possession thereof, and that it is authorized to acquire and hold real estate in the State or Territory in which the land is situated, and it must furnish a statement showing the percentage of each class of its stock, and the percentage of all of its stock, which is owned or controlled by or on behalf of persons whom the corporation knows to be or has reason to believe are aliens, or who have addresses outside of the United States, indicating which classes of stock have voting rights. If more than 10 percent of the voting stock, or of all of the stock, is owned or controlled by or on behalf of such persons, the corporation must give their names and addresses, the amount and class of stock held by each, and, to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each such person.

(2) If the purchaser declared by the manager is an alien individual, a partnership a member of which is an alien, an unincorporated association any appreciable number of the members of which are aliens, or a corporation, any appreciable percentage of the stock of which is held by aliens, and if the sale to such purchaser has not previously been approved by the Secretary, the declaration of the purchaser is subject to approval by the Secretary of the Interior, and the manager will withhold the cash certificate until such approval has been given. Such purchaser may submit a statement of reasons why the declaration should be approved despite the question of citizenship.

(c) When there has been full compliance with the regulations in this part, the manager will issue a cash certificate to the purchaser.

[Paragraphs (b) and (c) amended by Circ. 1791, 16 F.R. 4340, May 10, 1951]

§ 250.13 *Appeals.* An appeal pursuant to the Rules of Practice (Part 221 of this chapter) may be taken from any decision of the manager to the Director, and, from the decision of the Director to the Secretary.

NOTE: The reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1793]

PART 233—FLATHEAD IRRIGATION PROJECT, MONTANA

MISCELLANEOUS AMENDMENTS

Sections 233.9, 233.14, 233.16 and 233.28 are amended to read as follows:

§ 233.9 *Amendatory farm-unit plats.* When the plats describing the amended farm units are approved by the project engineer, he will forward two copies of the amendatory plat together with the assignment and accompanying showings to the land office, where the amendatory plat will be treated as an official amendment of the farm-unit plat, and one copy will be forwarded by the manager to the Regional Administrator, together with the assignment and accompanying showings. A copy of the amendatory plat will also be forwarded promptly by the project engineer to the Area Director, Bureau of Indian Affairs, Billings, Montana, for formal approval.

§ 233.14 *Notation of mortgage interest; effect of notation.* Every such notice of mortgage interest, filed as provided in the preceding section, must be forthwith noted upon the records of the project engineer, and of the land office, and be promptly reported to the Area Director, Bureau of Indian Affairs, and to the Regional Administrator, where like notation will be made. Relinquishment of a homestead entry, or part thereof, within the project, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein; nor will an assignment of such entry, or part thereof, under the act of July 17, 1914 (38 Stat. 510; 43 U. S. C. 593), extending to the Flathead project the provisions of the act of June 23, 1910 (36 Stat. 592; 43 U. S. C. 441), be recognized or permitted unless the assignment specifically refers to such mortgage and is made and accepted subject thereto.

§ 233.16 *Payment of appraised price and reclamation of land necessary.* All homestead entrymen within the Flathead project must, in addition to paying the appraised value of the land and water-right charges, reclaim at least one-half of the total irrigable area in their entries for agricultural purposes. Failure to make any two payments of the appraised price when due or to reclaim the land as above indicated, or any failure to comply with the requirements of the homestead law and the acts authorizing the construction of the Flathead project as to residence, cultivation, improvement, and payments, will render the entry subject to cancellation, and the money paid subject to forfeiture, whether water-right application has been made or not. Failure to make any two payments of the installments of water-right charges when due will render such entries subject to cancellation; and upon receipt of a statement from the Area Director, Bureau of Indian Affairs, that two of such payments remain due and unpaid, after proper service of notice upon the entryman and upon the mortgagee, if any such there be of record, the date and manner of service being stated, the entry will, without further notice, be canceled by the Regional Administrator.

§ 233.28 *When lien in patent will be released.* The Area Director, Bureau of Indian Affairs, will, upon the full payment of all building and betterment charges by any water user, issue certificate of the full payment of such charges releasing the lien therefor reserved in the patent under the act of August 9, 1912.

(Sec. 15, 35 Stat. 450)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JULY 16, 1951.

[F. R. Doc. 51-8418; Filed, July 20, 1951; 8:45 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular 1734]

Part 223—Montana Land Office, Billings

MISCELLANEOUS AMENDMENTS

Section 223.3, 223.11, 223.15 and 223.20 are amended to read as follows:

§ 223.3 Mandatory land-split plats. When the plats covering the approved farm units are approved by the Director, he will forward two copies of the mandatory plat together with the application and accompanying data to the land office where the mandatory plat will be located in an official manner. One copy of the farm-unit plat, and one copy will be forwarded by the manager to the Regional Administrator, together with the application and accompanying data. A copy of the mandatory plat will also be forwarded promptly by the project engineer to the Area Director, Bureau of Indian Affairs, Billings, Montana, for formal approval.

§ 223.11 Notation of mortgage interest; effect of notation. Every farm unit in which a mortgage interest, filed as provided in the preceding section, exists by instrument noted upon the records of the proper land office, and of the land office, and in appropriate records in the Area Director, Bureau of Indian Affairs, and in the Regional Administrator, where the notation will be made. Relinquishment of a mortgaged entry, or part thereof, within the period, upon which final proof has been submitted, where the records show the land to have been mortgaged, will not be accepted or noted, unless the mortgagee joins therein, or with an assignment of such entry, or part thereof, under the act of July 17, 1914 (38 Stat. 510; 43 U. S. C. 337), authorizing the Federal Farmer Loan Commissioner to take assignments of such entries, or the act of June 24, 1938 (52 Stat. 1037; 43 U. S. C. 341), as recognized by particular unions the mortgagee specifically refers to such mortgage and is made and accepted subject thereto.

§ 223.15 Payment of mortgaged price and redemption of land mortgaged. An instalment contract which the Federal project issues, in addition to paying the appraised value of the land and water-right charge, retains at least one-half of the total irrigable area in their original for agricultural purposes. Farms so made are two provisions of the approved plan, due to be related to the land as above indicated, or any failure to comply with the requirements of the program, for and the area existing the [illegible] of the Bureau of Indian Affairs, [illegible] and [illegible], will make the contract void. [illegible] in accordance, and the [illegible] subject to the [illegible], whether [illegible] right application has been made or not. Failure to comply the provisions of the [illegible] contracts of water-right charges when due will render such entries subject to cancellation and upon receipt of a statement from the Area Director, Bureau of Indian Affairs, that two of such payments remain due and unpaid, after proper notice of entry upon the entry, and upon the mortgagee, if any such there be of record, the date and manner of service being noted, the entry will, without further notice, be cancelled by the Regional Administrator.

§ 223.20 Final proof in patent will be filed. The Area Director, Bureau of Indian Affairs, will, upon the full payment of all instalments and between [illegible] to any farm unit, issue certificate of the full payment of such charges [illegible] the land therein covered in the patent under the act of August 9, 1912.

(sec. 24, 44 Stat. 659)

OSCAR L. CHAPMAN,
Secretary of the Interior.

July 16, 1951.

[F. R. Doc. 51-8318; Filed, July 20, 1951; 8:45 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1794]

PART 192—OIL AND GAS LEASES

MISCELLANEOUS AMENDMENTS

Office Copy

Obsolete

Replaced by 1840

Part 192 is amended as follows, effective September 1, 1951:

Paragraph (b), paragraph (e) (1), and paragraph (g) of § 192.42 (b) are hereby amended to read as follows:

§ 192.42 *Offer to lease, and issuance of lease.* * * *

(b) Five copies of Form 4–1158, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office, or for land or deposits in States in which there are no land offices, with the Director of the Bureau of Land Management, Washington 25, D. C. If less than five copies are filed, the offeror shall have 15 days from date of the first filing, to file the other required copies. Upon such completed filing the priority of the offer will be based upon receipt of the first filing. If the additional copies are not filed within the 15-day period, the offer will be rejected and returned to the offeror with any rental paid and will afford no priority to the offeror. The offer must be filed on a form in effect at the date of filing. For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

* * * * *

(e) Each offer, when first filed, shall be accompanied by:

(1) A filing fee of $10 which will be retained as a service charge, except as provided in § 192.42 (g), even though the offer should be rejected or withdrawn in whole or in part.

* * * * *

(g) An offer will be rejected and returned to the offeror, and it will confer no priority if it is not completed in accordance with the regulations in Parts 191 and 192 and the instructions printed on the lease form, and accompanied by the payments and documents required by such regulations and instructions, except that where a corporation has previously filed in any land office any of the documents required by paragraph (f) of this section a reference to that file may be made in lieu of the document together with a statement as to any changes therein since the document was filed. When an offer is rejected under this paragraph, the offeror will be given an opportunity to file a new offer within 30 days from the date of service of the rejection, and the fee and rental payments on the old offer will be applied to the new offer if the new offer shows the serial and receipt numbers of the old offer. The corrected offer will retain the same serial number, but the effective date of priority will be as of the date such new offer was received.

* * * * *

Paragraph (a) (1) of § 192.82 is hereby amended to read as follows:

§ 192.82 *Royalty on production.* * * *

(a) * * *

(1) 12½ percent royalty on noncompetitive leases issued under section 17 of the act: *Provided, however,* That any holder of a lease for lands in Alaska who shall drill and make the first discovery of oil or gas in commercial quantities in any geologic structure shall pay a royalty on all production under the lease of 5 percent for 10 years following the date of such discovery and thereafter the royalty rate shall be 12½ percent. If such lease is committed to an approved unit or cooperative plan under which such a discovery is made, the 5 percent rate herein provided shall, for the purpose of computing royalty due the United States, inure to the benefit of all the land to which an allocation is made under such plan.

* * * * *

Section 192.100 is amended by adding a paragraph (e) to read:

§ 192.100 *Amount of bonds required of lessee.* * * *

(e) In lieu of bonds required under any of the preceding paragraphs the holder of leases or of operating agreements approved by the Department or holder of operating rights by virtue of being designated operator or agent by the lessees pending departmental approval of operating agreements, may furnish a bond the amount of which must be $150,000 for full nation-wide coverage under both the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947 (61 Stat. 1913; 30 U. S. C. 351–359), or at the rate of $25,000 for each unit of coverage. A unit of coverage shall be all the lands in any one State or Territory held by the principal under either the Mineral Leasing Act or the Mineral Leasing Act for Acquired Lands. Coverage under both acts in one State or Territory constitutes two units. In lieu of a surety bond a personal bond in a like amount may be given by the obligor with the deposit as security therefor of negotiable bonds of the United States of a par value equal to the amount specified in the bond.

Section 192.101 is revised to read:

§ 192.101 *Form of bonds.* Bonds furnished by lessees will be on Form 4–208g; those furnished by operators on Form 4–238; bonds furnished in lieu of other bonds, pursuant to § 192.100 (e), will be on Form 4–1167 for surety bonds or on Form 4–1168 for personal bonds.

Section 192.141 (a) is amended to read as follows:

§ 192.141 *Requirements for filing of transfers.* (a) (1) Except as to assignments of record title, all instruments of transfer of a lease or of an interest therein, including assignments of working or royalty interests, and operating agreements, and subleases, must be filed for approval within 90 days from the date of final execution and must contain all of the terms and conditions agreed upon by the parties thereto, together with a statement over the transferee's own signature with respect to citizenship and interests held, similar to that required of an offeror under § 192.42 (e) (4) and (f).

(2) To obtain approval of a transfer affecting the record title of an oil and gas lease, a request for such approval must be made, within 90 days from the date of the execution of the assignment by the parties. Form 4–1175, "Assignment affecting Record Title to Oil and Gas Lease", or unofficial copies of that form in current use may be used for such transfers and requests for approval: *Provided,* That the unofficial copies are exact reproductions on one sheet of both sides of the official approved one-page form, and are without additions, omissions, or other changes, except that the copies shall include the following statement above the signature of the assignee: "This form is submitted in lieu of official Form 4–1175 and contains all of the provisions thereof as of the date of filing of this assignment." In addition, the name and address of the printer or other party issuing unofficial reproductions of the official form shall be printed thereon. This form may be used for any assignment which affects a transfer of the record title to all or part of an oil and gas lease, but it is not to be used for any other type of transfer. Form 4–1175, or a valid reproduction of the official form, will also constitute approval of the assignment when signed by the manager of the land office.

(3) An application for approval of any instrument of transfer of a lease or interest therein or a filing of any such instrument under § 192.145 must be accompanied by a fee of $10, and an application not accompanied by payment of such a fee will not be accepted for filing by the manager. Such fee will not be returned even though the application later be withdrawn or rejected in whole or in part.

* * * * *

Section 192.141 (c) is amended to read as follows:

(c) If a bond is necessary, it must be furnished. Where an assignment does not create separate leases the assignee, if the assignment so provides, may be-

come a joint principal on the bond with the assignor. Any assignment which does not convey the assignor's record title in all of the lands in the lease must also be accompanied by consent of his surety to remain bound under the bond of record for the lease interest retained by said assignor, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a nation-wide bond on either form, 4-1167 or 4-1168, applicable to the State and the act under which the lease issued, no additional showing is necessary by such party as to the bond requirement. If any overriding royalty or payments out of production are created which are not shown in the instrument or agreement, a statement must be submitted describing them. If payments out of production are reserved, a statement should be submitted stating the details as to the amount, method of payment, and other pertinent terms. Assignments of record title interests must be filed in triplicate. A single copy of any additional information specified in Instructions, Form 4-1175,[1] relating to citizenship and qualifications of corporations, will be sufficient. A single executed copy of all other instruments of transfer, or of an operating agreement is sufficient.

* * * * *

Section 192.145 is amended to read as follows:

§ 192.145 *Royalty interests in oil and gas leases and assignments thereof.* Royalty interests in oil and gas leases constitute holdings or control of lands and deposits within the meaning of the second sentence of section 27 of the act. Assignments of such interests must be filed for record purposes in the appropriate land offices in accordance with the applicable provisions of section 192.141. All assignments of royalty interests must be filed for the record, but those of 1 percent or less will be approved only upon specific request and then only after discovery. Any assignment of 1 percent or less if filed for the record will be deemed to be valid whether formally approved or not.

NOTE: The record keeping or reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JULY 23, 1951.

[F. R. Doc. 51-8695; Filed, July 27, 1951; 8:46 a. m.]

[1] Filed as part of the original document.

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter S—Rights-of-Way

[Circular No. 1795]

PART 244—RIGHTS-OF-WAY FOR CANALS, DITCHES, RESERVOIRS, WATER PIPE LINES, TELEPHONE AND TELEGRAPH LINES, TRAMROADS, ROADS AND HIGHWAYS, OIL AND GAS PIPELINES, ETC.

RIGHTS-OF-WAY THROUGH PUBLIC LANDS AND RESERVATIONS FOR OIL AND NATURAL GAS PIPELINES AND PUMPING PLANT SITES

Office Copy

Obsolete
Replaced by 1825
Replaced by Circular 1915 (11/58)
Ammendment to Circ. 1237B

A new section, numbered 244.53 and reading as follows, is added at the end of Part 244:

§ 244.53 *Common carrier stipulation required.* Each application for a natural gas pipeline right-of-way must include the following stipulation:

(a) The applicant agrees that it will operate the pipeline as a common carrier in accordance with the provisions of the Mineral Leasing Act as now or hereafter amended and pertinent regulations heretofore or hereafter adopted thereunder and that it will transport natural gas for others, whether such gas is produced from Government lands or not, at reasonable rates and subject to conditions to be allowed or determined by the regulatory agency having jurisdiction over such transportation, provided that no condition shall be imposed by the applicant which is inconsistent with the applicant's obligation to operate its pipeline as a common carrier. The applicant agrees to provide common carrier transportation service requested, including firm service, as follows:

(1) When any request for the transportation of natural gas is made and there is unused capacity in the applicant's pipe line, the applicant agrees promptly, or within such time as may be fixed by the Secretary, (i) to file with the regulatory agency having jurisdiction over such matter an application for issuance of authority to the applicant to transport such gas, to the extent of the unused capacity of the pipe line, if an application for such authority is required by the law applicable to such agency or by the rules or regulations of such agency, and, upon the issuance of such authority, to commence to render service to the extent of the unused capacity of the pipe line pursuant to the terms and conditions of such authority, or (ii) where no such authority need be obtained in advance of transportation, to file a rate schedule or tariff with such regulatory agency and to commence to render transportation service at the rates and subject to the conditions allowed or determined by such agency. Nothing in this paragraph (1) shall be construed to prevent any right of appeal which the applicant may have under applicable law from the issuance of authority under clause (i) or from any determination of rates or conditions under clause (ii) of the preceding sentence, but no appeal taken by the applicant shall delay the commencement of transportation service by the applicant as provided in that sentence.

(2) If there is no unused capacity or insufficient unused capacity in the applicant's pipeline at the time when the request for transportation is made, the applicant agrees promptly, or within such time as may be fixed by the Secretary, to file with any regulatory agency having jurisdiction over such matter an application for issuance of authority to the applicant to increase the capacity of its pipeline sufficiently to enable the applicant to provide for the transportation of the natural gas proposed for shipment, but the applicant shall not be required to apply for the issuance of authority to increase the capacity of its pipeline to such an extent that such increased capacity, when added to any increased capacity theretofore provided pursuant to this stipulation, will exceed that capacity of the pipeline not devoted to common carrier transportation at the time the request for common carrier transportation is made. The applicant shall be required to file an application for authority to increase the capacity of its pipeline only if the prospective shipper joins in such application and only if the prospective shipper advises the applicant in writing that at any hearing upon such application the shipper shall have the burden of showing an adequate gas supply, markets, and other relevant facts necessary to establish, consistent with applicable law, the economic feasibility of the facilities and investment required to provide necessary added capacity and to justify the issuance of authority for the construction of such facilities, and that the shipper agrees to offer natural gas for transportation through the applicant's pipeline, upon completion of the construction of the increased capacity within a reasonable time, in such amounts and for such period of time as will be sufficient to pay the construction and operation costs allocable to his shipments plus a reasonable return on the investment allocable to such shipments. Applicant further agrees to proceed diligently to provide the increased capacity for common carrier transportation, the construction of which is authorized by any final order of any regulatory agency having jurisdiction over such transportation, provided that the applicant will not be required to construct such additional facilities until it is able to obtain necessary outside funds, if any are needed, on terms submitted to and sanctioned by the regulatory agency in connection with the application to obtain such authority, but nothing herein contained shall be construed as a waiver of any right which the applicant may have under applicable law to appeal from such final order.

Upon completion of construction under such authorization, applicant will take all steps necessary, including the filing of rate schedules or tariffs where required, to commence service pursuant to the terms and conditions of the authorization and at the rates and subject to the conditions allowed or determined by the agency. Nothing in the preceding sentence shall be construed to prevent any right of appeal which the applicant may have under applicable law from any determination of rates or conditions by the regulatory agency, but no such appeal taken by the applicant after the completion of construction, shall delay the commencement of transportation service by the applicant as provided in that sentence.

(b) Any rate schedule or tariff filed under paragraph (a) shall include the provisions set forth in paragraph (a) of this stipulation and no change shall be made in paragraph (a) without first obtaining the approval of the Secretary of the Interior. A copy of such rate schedule or tariff and of any amendment to, or revision of, a rate schedule or tariff shall be furnished to the Secretary of the Interior when the original is filed with the regulatory agency.

(c) None of the specific provisions of this stipulation shall be construed to limit in any way the obligation of the applicant to operate its pipeline as a common carrier in accordance with the provisions of the Mineral Leasing Act as now or hereafter amended and pertinent regulations heretofore or hereafter adopted under that Act or any other obligations imposed on the applicant by such Act or regulations, and any violation of such obligation shall be ground for the cancellation of the right-of-way, as provided in the Mineral Leasing Act.

Every applicant for a natural gas pipeline right-of-way whose application is pending before the Department on the date of the promulgation of this section, without final action thereon having been taken by the Department, shall be required to execute and file the stipulation prescribed in this section within 30 days after such date.

(Secs. 28, 32, 49 Stat. 678, 41 Stat. 450; 30 U. S. C. 185, 189)

NOTE: The record keeping or reporting requirements of this reglation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

OSCAR L. CHAPMAN,
Secretary of the Interior.

JULY 27, 1951.

[F. R. Doc. 51-8855; Filed, Aug. 1, 1951; 8:46 a. m.]

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

[Circular No. 1796]

AMMENDMENT TO: CIRC. 1738

Replaced by 2005

PART 196—PHOSPHATE LEASES AND USE PERMITS

LIMITATION ON OVERRIDING ROYALTIES

Part 196 is amended by adding thereto a new section as follows:

§ 196.20 *Limitation on overriding royalties.* An overriding royalty interest shall not be created by assignment or otherwise exceeding one per cent of the gross value of the output at point of shipment to market or an overriding royalty interest which when added to any other overriding royalty interest exceeds that percentage, excepting that where an interest in the leasehold, or operating agreement is assigned, the assignor may retain an overriding royalty interest in excess of the above limitation if he shows to the satisfaction of the Director, Bureau of Land Management, that he has made substantial investments for improvements on the land covered by the assignment.

(Sec. 32, 41 Stat. 450; 30 U. S. C. 189)

OSCAR L. CHAPMAN,
Secretary of the Interior.

JULY 28, 1951.

[F. R. Doc. 51-8906; Filed, Aug. 2, 1951; 8:46 a. m.]

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of August 3, 1951

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TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter G—Exchanges

[Circular No. 1797]

PART 145—GENERAL REGULATIONS GOVERNING EXCHANGES

REVOCATION OF PART

Part 145, containing §§ 145.1 to 145.6 inclusive, outlining a procedure in connection with proposed exchanges of lands in grazing districts, under which the State and private owners may confer informally with field representatives of the Bureau of Land Management with respect to the various features involved in proposed exchanges, in advance of the filing of formal applications, is revoked in its entirety.

(R. S. 2478; 43 U. S. C. 1201)

R. D. SEARLES,
Acting Secretary of the Interior.

AUGUST 9, 1951.

[F. R. Doc. 51-9703; Filed, Aug. 15, 1951; 8:45 a. m.]

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Replaced by 2171

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Subchapter A—Alaska

[Circular 1798]

PART 65—HOMESTEADS

MISCELLANEOUS AMENDMENTS

In order to show the amount of cultivation during the second and later entry years required for the submission of satisfactory proof on homestead entries, §§ 65.19, 166.27, and 166.35 are amended as follows:

Section 65.19 is amended to read:

§ 65.19 *Commutation of entries.* To the extent of not more than 160 acres an entry may be "commuted" after not less than 14 months' residence upon the land, cultivation of the area commuted to the extent required under the ordinary homestead laws and payment of $1.25 per acre; that is, the claimant must show the existence of a habitable house on the land at the time of final commutation proof, that residence for the period of not less than 14 months was actual and substantially continuous, and cultivation of one-sixteenth of the area during the second year of the entry, and, if commutation proof is submitted after the second entry year, one-eighth of the area the third entry year and until the submission of final commutation proof. In such cases the homesteader is entitled to a 5 months' leave of absence in each year, but cannot have credit as residence for such period, since actual presence on the land for not less than 14 months is required. However, an additional entry under the act of April 28, 1904 (33 Stat. 527; 43 U. S. C. 213), or a national forest homestead under the act of June 11, 1906 (34 Stat. 233; 16 U. S. C. 506–509), is not subject to commutation.

Subchapter I—Homesteads

PART 166—ORIGINAL, ADDITIONAL, SECOND, AND ADJOINING FARM HOMESTEADS, AUTHORIZED BY THE GENERAL PROVISIONS OF THE HOMESTEAD LAWS

1. Section 166.27, paragraph (b), is amended to read:

§ 166.27 *Requirements for commutation proof; contest after 14 months' residence.* * * *

(b) The entryman, or his statutory successor, must show that substantially continuous residence upon the land was maintained until the submission of the proof or filing of notice of intention to submit same, the existence of a habitable house on the claim and cultivation of the area commuted to the extent required under the ordinary homestead laws, that is, cultivation of one-sixteenth of the area during the second year of the entry, and one-eighth during the third entry year and until final commutation proof. However, the proof may be accepted where actual residence on the land for the required period of 14 months is shown, even though slightly broken, provided it be in reasonably compact periods; and the failure to continue the residence until filing of notice to submit proof will not prevent its acceptance if the Bureau of Land Management be fully satisfied of entryman's good faith, and provided no contest or adverse proceedings shall have been initiated for default in residence, or other good cause, prior to filing of such notice. Credit for residence and cultivation before the date of entry may be allowed under the conditions explained in § 166.24, as to 3 year proof.

2. Section 166.35 is amended to read:

§ 166.35 *Commutation proof.* An entry which is otherwise subject to commutation may be commuted, notwithstanding the granting of relief to the homesteader under this provision of law; but the periods of actual residence on the land must aggregate at least 14 months, and cultivation of not less than one-sixteenth of the area during the second year of the entry and one-eighth during the third entry year and until final commutation proof must be shown, unless a reduction has been granted in the requirements in that regard.

(R. S. 2478, sec. 1, 30 Stat. 409, as amended; 43 U. S. C. 1201, 48 U. S. C. 371)

OSCAR L. CHAPMAN,
Secretary of the Interior.

SEPTEMBER 7, 1951.

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Interior--Duplicating Section, Washington, D.C. 5019

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Circular No. 1799

Part 234—Reclamation of Arid Lands in Nevada

DEVELOPMENT AND UTILIZATION OF SUBTERRANEAN WATERS IN NEVADA FOR IRRIGATION PURPOSES

AUTHORITY: §§ 234.1 to 234.14 issued under sec. 9, 41 Stat. 295; 43 U. S. C. 360.

SOURCE: §§ 234.1 to 234.14 contained in Circular 666, April 8, 1927.

CROSS REFERENCES: For general orders of withdrawals, see §§ 297.11, 297.12 of this chapter. For land classifications, see Part 296 of this chapter.

§ 234.1 *Statutory authority.* The patenting of public lands, in Nevada, on the discovery and development of underground waters, is authorized by the act of Congress approved October 22, 1919 (41 Stat. 293; 43 U. S. C. 351–355, 357–360), entitled "An act to encourage the reclamation of certain arid lands in the State of Nevada, and for other purposes," as amended by the act of September 22, 1922 (42 Stat. 1012; 43 U. S. C. 356)

§ 234.2 *Beneficiaries.* (a) The act referred to in the preceding section, as the title indicates, is limited in its operation to lands in the State of Nevada and is designed to encourage the development and utilization of subterranean waters for irrigation purposes. It confers upon the Secretary of the Interior authority to grant permits to citizens of the United States, or associations of such citizens, giving the exclusive right to explore not to exceed 2,560 acres of land selected by them.

(b) The only qualifications provided in the act for persons receiving the benefits thereof are that the applicant, or each member of an association of applicants, shall be a citizen of the United States; that he shall not be a beneficiary under any other application or permit under this act for land situated within an area of 40 miles square, and that he has not been a permittee under any other permit under this act, which has been canceled for failure to comply with its terms.

(c) Married women, if their interest is actual and bona fide, have the same privileges as unmarried persons. A corporation is not considered as an association of persons within the meaning and purpose of the act.

(d) A permit under the act is not assignable, but the interest of a deceased permittee will pass to his legal representative.

(e) The 40-mile square limitation is construed to mean an area of that extent in which the lands covered by a permit theretofore granted are in the approximate center; to avoid possible violation of this provision of the act, applicants for more than one permit are advised not to include in their applications for additional permits any lands within less than 20 miles of any boundary of the lands included in any other application or permit in which the applicant is interested.

§ 234.3 *Lands subject to disposition under act.* Lands to be designated and made subject to disposition under the act of October 22, 1919, as amended, are those public lands which are unreserved, unappropriated, nonmineral, nontimbered, and not known to be susceptible of successful irrigation from any known source of water supply at a reasonable cost.

§ 234.4 *Application.*[1] Any qualified applicant desiring to explore for water under the terms of this act should file with the manager of the land office of the district in which the land is situated, an application for permit, together with a corroborated statement as to the character of the land, and pay the filing fee of 1 cent an acre for each acre of land involved. The application should be filed in duplicate and cover the following points:

(a) *Name and address.* Name and address of the applicant or each member of an association of applicants.

(b) *Citizenship.* If the applicant or each member of the association of applicants is a native-born citizen of the United States, the application must so state. If a naturalized citizen, the application should state the fact, and be accompanied by a statement as to the applicant's naturalization, as required by Part 137 of this chapter. It should be noted that unlike most public land laws, no rights may be initiated under this act by an alien who has only filed a declaration of intention to become a citizen.

(c) *Special requirements.* (1) In accordance with the specific requirements found in sections 1, 2, and 3 of the act of October 22, 1919, as amended, the application should include an averment that neither the applicant nor any member of an association of applicants has filed an application under this act for lands within an area of 40 miles square embracing the lands in the present application; that no permit heretofore granted to him, or to any association of which he was a member, has ever been canceled for noncompliance with the terms and conditions of such permit; that the application is honestly and in good faith made for the purpose of reclamation and cultivation, and not for the benefit of any other person or corporation, and that he is not acting as agent for any person, corporation, or syndicate, to give them the benefit of the land applied for, or any part thereof, and that he will faithfully and honestly endeavor to comply with all the requirements of the act.

(2) The application should also include an averment that no spring or water hole exists, if it be a fact, upon any legal subdivison of the land involved, if surveyed, and if unsurveyed, within one-quarter of a mile from the exterior limits thereof. If there be any spring or water hole, the exact location and size should be stated, and an estimate furnished of the quantity of water in gallons which it is capable of producing daily, together with any other information necessary to determine whether or not it is valuable or essential as a public water reserve.

(d) *Description of land applied for.* (1) If the land is surveyed, it should be described by legal subdivisions. If the and is unsurveyed, it should be described with reference to locality, natural objects, and permanent monuments as fully and carefully as possible, with such detail and precision that the boundaries and location of the land may be readily traced and ascertained; if the land is situated within a reasonable distance from a known corner of the public-land survey, the course and distance should be given from such Government corner to a described point on the boundary of the land applied for; also, where practicable, the land should be described, as

[1] 18 U. S. C. 1001 makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

nearly as can be ascertained, in accordance with the legal subdivisions of the regular extension of the Government survey over the land. In this connection, all applicants for unsurveyed lands are urged to make a complete metes and bounds survey of the land applied for, with an accurate tie-line by course and distance to a Government corner, otherwise, with the large areas that may be embraced in applications under this act, it will be impossible to prevent conflicts and consequent controversy and litigation. If impracticable to make such a survey prior to filing the application, it may be made later, and the descriptions in the application and permit, if granted, may be amended accordingly. All corners of unsurveyed land selected should be marked with substantial post or rock monuments.

(2) All land applied for must be contiguous and situated in reasonably compact form; in the absence of special or unusual conditions, an application for land extending more than 4 miles in any one direction will not be considered acceptable.

(3) A map should accompany each application, showing by legal subdivisions the land selected, if surveyed; if the land is unsurveyed, then it should be shown by legal subdivisions as nearly as possible in accordance with the regular extension of the Government survey.

(e) *Character of the land.* This showing should not only allege that the land applied for is "unreserved, unappropriated, nonmineral, nontimbered public land of the United States in the State of Nevada, not known to be susceptible of successful irrigation at a reasonable cost from any known source of water supply," but should also include such a complete statement of pertinent specific facts as will afford an adequate basis for classification and designation, such as (1) the lay of the land, slope; (2) whether timber, sagebrush, or grassland; (3) kind of soil; (4) altitude; (5) length of growing season; (6) rainfall and distribution thereof through the year; (7) location with respect to any surface-water supply for irrigation; (8) what is known as to underground water supply on the land or in the vicinity; (9) whether land will mature crops by dry-farming methods; together with any additional facts having a direct or indirect bearing on the question of whether the land may properly be designated, the chances of successful development, and the good faith of the applicant.

(f) *Corroboration.* If, at the time of filing application, the land has not been designated as subject to the act, all that portion of the application relative to the character of the land must be corroborated by two disinterested witnesses, having personal knowledge of the facts; or by a separate and independent affirmative statement of the facts; but, if the land is already designated at time of filing application, no corroborating witnesses are required.

§ 234.5 *Action on application.* Upon receipt of the papers, the manager will carefully examine the same and if found regular transmit them to the regional administrator for appropriate action. In case the land has not been designated, the application will be suspended by the regional administrator until such time as it shall have been designated, or until it shall have been determined that it is not of the character contemplated by the act. If the land shall subsequently be designated under the act, the application will then be approved and a permit issued, if no good and sufficient reason for disapproval be then apparent; otherwise it will be rejected, subject to the right of appeal. During the term of suspension the land will not be subject to disposal in any way.

§ 234.6 *Conditions of permits.* Permits will be granted only upon condition that active operations be begun for the development of underground water within 6 months from date of approval and continued diligently in good faith until water has been developed in quantity sufficient for the practicable irrigation of not less than 20 acres, or until the date of expiration of the permit; and if the permittee shall not continue such operations in good faith and with reasonable diligence, or if he shall violate any of the terms of the permit, upon presentation of satisfactory proof thereof, the permit will be forthwith canceled and he will not again be granted a permit under the act. (See § 234.13.)

§ 234.7 *Progress reports.* At or near the end of the 6 months' period, beginning with the date of the permit, and again at the end of the first year of the life of the permit, if final proof of water development and reclamation has not been submitted, the permittee, or at least one member of an association of permittees, must file in the proper district land office a properly executed statement, corroborated by at least two disinterested witnesses, having knowledge of the facts, showing when the work of exploration was begun, in what manner and to what extent it has been prosecuted, and what results have been obtained. (See § 234.13.)

§ 234.8 *Showing required for proof.* Unless granted an extension of time the permittee is allowed 2 years from the date of his permit in which to complete the work of exploration, and whenever he shall within that time satisfactorily establish that sufficient water has been discovered, developed, and made permanently available to produce a profitable agricultural crop other than native grasses, upon not less than 20 acres of the land described in the permit, he will be entitled to patent for one-fourth of the land embraced in the permit. No mere perfunctory or questionable compliance with the law will be accepted. It must appear that an agricultural crop has been actually raised—not necessarily a paying or profitable crop but such a crop as will satisfy the Secretary of the Interior that in time and under ordinary circumstances profitable crops of some sort can be produced from the land. No patent will be granted until the full 20 acres have been cleared, leveled, ditched, plowed, fenced, and an agricultural crop actually planted and raised by irrigation, all in accordance with good farming practice. The wells, pumps, or other works and equipment for the development and supplying of water must be of a permanent and dependable character, suitable for use year after year. A detailed statement of costs of irrigation and production of crops from such water supply will be required; to this end, accurate account should be kept of such costs. No patent can be granted under the act if the cost of irrigation from the developed water supply is practically prohibitive. The act requires a successful development and demonstration of the use of subterranean water, as the principal condition precedent for patent.

§ 234.9 *Form of lands selected for patent; survey.* The land selected for patent shall be in compact form according to legal subdivisions of the public-land surveys, if the land be surveyed. If the land be unsurveyed, the permittee may, at any time during the life of his permit, apply to the proper regional cadastral engineer for a survey of the land for which he intends to make application for patent. The regional cadastral engineer will thereupon make an estimate of the cost and call on the permittee for a deposit of the amount of the estimate. If the deposit made should prove insufficient, an additional deposit will be called for. If the applicant has not taken steps to procure a survey before submitting final proof, after final proof has been submitted and examined, if same is found satisfactory and acceptable, and in the meantime the public-land system of surveys has not been extended over the lands in question, call will be made on the permittee to make the necessary deposit with the proper regional cadastral engineer to cover the cost of survey, in which case the issuance of patent will be suspended until the survey is made and accepted. Wherever practicable such official survey will be an extension of the regular system of township surveys, in which case the selection for patent must be conformed to the legal subdivisions of such survey.

§ 234.10 *Minerals reserved.* The act provides that all entries made and patents issued under its provisions shall be subject to and contain a reservation to the United States of all the coal and other valuable minerals in the lands entered and patented, together with the right to prospect for, mine, and remove the same.

§ 234.11 *Disposal of permit lands, after patent.* On the issuance of patent the remaining area within the limits of

the land embraced in the permit will thereafter be subject to entry and disposal only under the act of May 20, 1862 (R. S. 2289; 43 U. S. C. 161, 171), entitled "An act to secure homesteads to actual settlers on the public domain," and amendments thereto, in areas not exceeding 160 acres.

§ 234.12 *Final proof.* (a) Final proof of the discovery, development ,and availability of sufficient water to justify patent may be made by the permittee, or, in case of his death, by his heirs, executors, or administrators, or in case the permittee is an association of individuals, by any member of such association, at any time after such discovery and development as hereinbefore defined, but must be made within 2 years after the date of the permit; but an additional period, not to exceed 1 year, may, upon proper showing, be allowed within which to make the required proof of actual irrigation and cultivation.

(b) When a permittee has reclaimed the land and is ready to make final proof he should apply to the manager for a notice of intention to make such proof. This notice must contain a complete description of the land selected by him for patent and give the serial number of the permit and name of the claimant. It must also show when, where, and before whom the proof is to be made. Four witnesses may be named in the notice, two of whom must be used in making proof. Care should be exercised to select as witnesses persons who are familiar, from personal observation, with the land in question and with what has been done by the claimant toward reclaiming and improving it. Care should also be taken to ascertain definitely the names and addresses of the proposed witnesses, so that they may correctly appear in the notice.

(c) This notice must be published once a week for 5 successive weeks in a newspaper of established character and general circulation published nearest the land, and it must also be posted in a conspicuous place in the district land office for the same period of time. The permittee must pay the cost of the publication, but it is the duty of managers to procure the publication of proper final-proof notice, and managers should accordingly exercise the utmost care in that behalf. The date fixed for the taking of the proof must be at least 30 days after the date of first publication. Proof of publication must be made by the certificate of the publisher of the newspaper or by some one authorized to act for him. The manager will certify to the posting of the notice in the district land office.

(d) On the day set in the notice (or in the case of accident or unavoidable delay, within 10 days thereafter) and at the place and before the officer designated, the claimant will appear with two of the witnesses named in the notice and make proof of the reclamation of the land. The testimony of each claimant should be taken separately and apart from and not within the hearing of either of his witnesses, and the testimony of each witness should be taken separately and apart from and not within the hearing of either the applicant or of any other witness, and both the applicant and each of the witnesses should be required to state, in and as part of the final-proof testimony given by them, that they have given such testimony without any actual knowledge of any statement made in the testimony of either of the others.

(e) Final proof may be made before any officer authorized to administer oaths in public land cases, as explained in § 210 1 of this chapter.

§ 234.13 *Extensions of time.* (a) The act of September 22, 1922 (42 Stat. 1012; 43 U. S. C. 356), authorizes the allowance under certain conditions of an extension of time for a period not exceeding 2 years for the beginning, recommencement, or completion of the work of water development and the submission of final proof of reclamation. This does not mean that the extension will be granted as a matter of course, and applications for extension will not be granted unless it be clearly shown that the failure to complete the work of exploration and water development or of reclamation, as the case may be, within the required period was due to no fault on the part of the permittee but to some unavoidable delay for which he was not responsible and could not have readily foreseen.

(b) A permittee who desires to make application for extension of time should file with the manager an application setting forth fully the facts, showing how and why he has been prevented from beginning or completing the work of water development and making final proof within the regular period. The application must be corroborated by at least two witnesses who have personal knowledge of the facts. The manager, after carefully considering all the facts, will take appropriate action on the application.

(c) The manager is required to suspend any application for extension of time if he considers it defective in form or substance and to allow the applicant 30 days to make such amendments therein as may be deemed necessary to remove the defects or to file exceptions to the requirements made, advising him that upon his failure to take any action within the time specified appropriate recommendation will be made. After the expiration of the time thus granted the original application and the amendments or exceptions, as the case may be, will be given appropriate consideration by the manager.

§ 234.14 *Contests and protests.* Contests and protests may be made against applications, permits, and final proofs under the act of October 22, 1919, as amended, the same as other entries or selections under the public land laws, and same will be disposed of in accordance with the Rules of Practice, Part 221 of this chapter, so far as applicable. No preference right, however, can be gained by such contest or protest, but if successful the entire area embraced in the permit will revert to the public domain and the land will be subject to the applicable public land laws.

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